

# THE POLLUTER PAYS PRINCIPLE AND THE RISING WAVES OF ENVIRONMENTAL HARM IN NIGERIA: HOW WELL ARE THE POLLUTERS PAYING?

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## Abstract

*Environmental legal conscription is a legal phrase which presupposes that environmental legislation should redress the conundrum of a subject matter. The Polluter Pays Principle is an environmental policy which posits that producers of pollution should be made liable to bear the costs of damage or cost of managing pollutants to prevent damage to human health and the environment. Over the years, the heave of recurrent pollution of the environment with hazardous substance has posed a great challenge that left environmental problems unresolved. There has been continuous generation of hazardous wastes on the environment by industrial activities even in the face of numerous environmental legislations. The multinational oil industries are often reluctant in taking up responsibility to ensure a thorough clean up or pay adequate compensation to the victims of environmental pollution that are suffering from the hazards or damage caused to the environment. This article is aimed at effective control to human atrocious activities posing serious threat to environmental sustainability. In this regard, this paper adopts the doctrinal legal research methodology and investigates the environmental legal conscription on polluter pays principle in Nigeria. Consequent upon this, it recommends that stringent enforcement of the polluter pays principle is more effective in curbing environmental hazards as it makes the polluters responsible for the damage or harm caused to the environment. This will conserve the Nigeria environment and promote sustainability.*

**Keywords:** Pollution, Environment, Hazards, Wastes, Legislations, Polluter.

## 1. Introduction

The polluter pays principle was first formerly articulated in 1972 by the Council of the Organization for Economic Co-operation and Development (OECD).<sup>1</sup> The Polluter Pays Principle was enacted to make the party responsible for producing pollution liable to pay for the damages done to the natural environment.<sup>2</sup> The doctrine of polluter pays principle posits that the

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<sup>1</sup> The OECD was officially born in 1961. <<https://www.oecd.org/gov/regulatory-policy/OECD%20profile.pdf>> Accessed 15 January 2023.

<sup>2</sup> The Polluter-pays Principle- OECD Analyses and Recommendations <[https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=OCDE/GD\(92\)81&docLanguage=En#:~:text=The%20Polluter%2DPays%20Principle%20\(PPP,the%20costs%20of%20pollution%20control.>](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=OCDE/GD(92)81&docLanguage=En#:~:text=The%20Polluter%2DPays%20Principle%20(PPP,the%20costs%20of%20pollution%20control.>) accessed 15 January 2023.

cost of cleaning up damage caused by pollution should be borne by the person responsible for causing the pollution.<sup>3</sup>

The polluter pays principle, as an environmental policy means that the polluter should bear the cost or expenses of carrying out measures decided by public authority to ensure that the environment is in an acceptable state.<sup>4</sup>In other words, the cost of these measures should be reflected in the cost of goods and services that cause pollution in production and consumption. Such measures should not be accompanied by subsidies that would create significant distortions in international trade and investment. The rationale for the polluter pays principle can be gleaned from issues such as efficiency, equity, judicial and pedagogical reasoning.<sup>5</sup>

One of the major purposes of the policy is to internalize the economic cost of pollution control, cleaning and protection measures and to ensure that the government did not distort international trade and investment by subsidizing those environmental costs. The reason is that when a charge is levied, it induces polluters to treat their effluents and they will do this as long as the treatment costs remain lower than the amount of the charge they would otherwise be compelled to pay in the absence of pollution abatement.<sup>6</sup>

On waste management scheme, the polluter pays principle is also denoted as extended polluter responsibility which seeks to shift the responsibility of dealing with wastes by internalizing the cost of waste disposal into the cost of the product. This in effect will create an incentive for producers to improve the waste management profile of their companies, thus decreasing waste and increasing possibilities for reuse and recycling.<sup>7</sup>

The Organization for Economic Co-operation and Development (OECD), defines the extended polluter responsibility as a concept where manufacturers and importers of products should bear a significant degree of responsibility for the environmental impacts of their products throughout the products life-cycle, including upstream impacts inherent in the selection of materials for the products, impacts from the manufacturers production process itself and downstream impacts from the use and disposal of the products. Producers accept their responsibility when designing their products to minimize life-cycle environmental impacts and as well accept legal, physical or socio-economic responsibility for environmental impacts that cannot be eliminated by design.<sup>8</sup>

The polluter pays principle is evaluated in this paper as an environmental policy under the Nigerian environmental legislation by taking a critical investigation on some relevant provisions reflecting its impact on the need for conservation and sustainability of the Nigeria environment.

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<sup>3</sup> Bryan A. Garner, *Blacks Law Dictionary*, Eleventh Edn. (USA; published by Thomson Reuters, 2019). p.1403.

<sup>4</sup> Gina Elvis-Imo, *An Analysis of the Polluter Pays Principle in Nigeria*, vol.1,No.1 aculj.acu.edu.ng.(2016) P.3 Accessed 8 January 2023.

<sup>5</sup> Ibid

<sup>6</sup> Goldenberg J., *Energy Environment and Development*, Earth Scan Publication Ltd. P.125, cited in Gina Elvis-Imo, *An Analysis of the Polluter Pays Principle in Nigeria*, vol.1,No.1 aculj.acu.edu.ng.(2016) P.3 Accessed 8 January 2023.

<sup>7</sup> Ibid (n. 4)

<sup>8</sup> Organization for Economic Cooperation and Development (OECD), *Extended Producer Responsibility*, Project Fact Sheet, Environment Directorate, Paris France (2006). Accessed 8 January 2023.

The polluter pays principle will be best appreciated in its literal meaning to the effect that he who pollutes the environment should pay damages and clean up the polluted area. Some writers have also argued that it is vague in definition, thus, in the words of Hoitink,<sup>9</sup> the exact meaning of polluter pays principle is still very not clear and that the uncertainty revolving round the meaning of the polluter pays principle is sometimes viewed from the perspective that it is an adage rather than seen as a legal principle. That being as it were, it is important to say that the aim of this principle is to sustain a natural environment devoid of pollutants and if pollution must occur, then the polluter must bear the consequences of his act. To effectively discuss the topic of the study, this paper is divided into six parts including the introduction. Part II discusses the application of the polluter pays principle in international communities such as U.S and Netherlands, Part III examines polluter pays principle under Nigeria environmental law, Part IV evaluates the fundamental human rights and the polluter pays principle, Part V appraises the rule in *Ryland v Fletcher* vis-a-vis the Polluter Pays Principle while Part VI recommends and concludes the paper.

## 2. Application of the Polluter Pays Principle in International Communities

In the U.S, the polluter pays principle has been accepted and enforced in most areas of environmental laws dealing with pollution abatement. Examples of such are the Clean Water Act<sup>10</sup>, Resource Conservation and Recovery Act (Solid Waste and Hazardous Waste Management)<sup>11</sup> and Clean Air Act<sup>12</sup>.

One of the famous environmental legislation on this principle is the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980. The Act was nicknamed Superfund as it established environmental programme known as Federal Superfund Programme enforced by the Environmental Protection Agency (EPA).

The Superfund Programme is operationally designed to inspect and clean up locations polluted with hazardous substances dangerous to humans. The sites that are controlled under superfund programme are known as superfund sites. Over the years, records have shown in the U.S that there are 40,000 federal superfund sites across the Country.<sup>13</sup> There are also about 1,300 superfund sites that have been listed on the National Priorities List as most highly polluted sites.<sup>14</sup> These sites are usually examined under a long term remedial examination.

The Environmental Protection Agency in its responsibility seeks to fish out individuals or industries responsible for the pollution of the environment through the release of hazardous substances and either compel them to clean up the polluted area or undertake to clean up by using the superfund which is a trust fund. Once this is done, the agency will recover the expenses incurred from the individual or the industry responsible for the act. Historically, approximately 70% of superfund cleanup activities have been paid for by the potentially responsible parties.<sup>15</sup>

<sup>9</sup> Jessica E. Hoitink, The Principle of the Polluter Pays; Revival of an Environmental Principle: Serial Principles in Environmental Legislation, *Milieu en Recht* 27 (2) (2000) 30.

<sup>10</sup> Water Enforcement (Washington D.C. U.S Environmental Protection Agency) EPA (2015).

<sup>11</sup> Waste, Chemical and Cleanup Enforcement (Washington D.C. U.S Environmental Protection Agency) EPA (2016).

<sup>12</sup> Air Enforcement (Washington D.C. U.S Environmental Protection Agency) EPA (2015).

<sup>13</sup> [Wen.m.wikipedia.org>wiki>polluter pays principle](https://www.wikipedia.org/wiki/polluter_pays_principle)- Wikipedia. Accessed 15 January 2023.

<sup>14</sup> Ibid

<sup>15</sup> Thomas Voltaggio and John Adams, Superfund: A Half of Progress, EPA Alumni Association, (2016).

One major notable limitation to the implementation of the polluter pays principle is the observation remarked by the U.S Environmental Protection Agency to the effect that the principle has not been fully implemented in the U.S environmental laws and programmes such as drinking water and sewage treatment service which are subsidized and there are limited mechanisms in place to fully assess polluters for treatment costs.<sup>16</sup>

In Netherlands, one of the most common examples of the polluter pays principle applies to plastic bags. Since 2016, retailers in Netherlands are no longer allowed to give away free plastic bags; consumers must either pay for one or take along their own bags.<sup>17</sup> This has to a large extent controlled free-for-all pollution activities. The Netherlands has an open economy with rapid expansion which made it ranks the world's 6<sup>th</sup> largest exporting country and its gross domestic product (GDP) is the world's 14<sup>th</sup> highest. The Netherland has become a hub of international commerce with transport infrastructure centered on the port of Rotterdam (the busiest port in the world) and Amsterdam-Schiphol airport.<sup>18</sup>

Environmental issues have a strong international dimension in the Netherlands, reflecting regional environmental interdependencies such as trans boundary air and water pollution, North Sea Pollution, regional economic interdependencies and global environmental issues such as vulnerability to climate change, sea level rise, the importance of trade and environmental aid. Since the early 1990s, the Netherlands has made considerable progress in decoupling a number of environmental pressures from economic growth and meeting several of its ambitious environmental targets. This progress reflects the reshaping of the Dutch economy and the strengthening of environmental policies.<sup>19</sup> The Netherlands has expanded its use of economic and fiscal instruments and in all environmental matters is enforcing the polluter pays and user pays principles.

### **3. Polluter Pays Principle under Nigeria Environmental Law**

In Nigeria, the polluter pays principle appears to be a strange doctrine. Environmental solicitude and worry were not a priority. On the contrary they were rather regarded as sybaritic or profound medicals that forced threat for advancing industrialization.<sup>20</sup> Nigeria and many other Africa nations still experience serious and diverse environmental problems described as "staggering".<sup>21</sup> It is a recognized fact to ensure the existence, safety, security, and health living in the environment for humanity.<sup>22</sup>

<sup>16</sup> Water and Waste Water Pricing: An Informational Overview (Washington D.C. U.S Environmental Protection Agency) EPA 2003, 832.

<sup>17</sup> [Wen.m.wikipedia.org>wiki>polluter pays principle](https://en.m.wikipedia.org/wiki/polluter_pays_principle)- Wikipedia. accessed 15 January 2023.

<sup>18</sup> The OECD Environmental Programme, Environmental Performance Review of the Netherlands. 2958654.pdf accessed 7 January 2023.

<sup>19</sup> Ibid

<sup>20</sup> Adegoke Adegrooye, The Challenges of Environmental Enforcement in Africa: The Nigerian Experience, in 1 Third International Conference on Environmental Enforcement: Conference Proceedings 43, 43 (Jo Gerardu & Cheryl Wasserman eds., 1994).

<sup>21</sup> William L. Andreen, Environmental Law and International Assistance: The Challenge of Strengthening Environmental Law in the Developing World, 25 COLUM. J. ENVTL. L. 17, 18 (2000).

<sup>22</sup> Emetumah F.C., Modern Perspectives on Environmentalism: Ecocentrism and Technocentrism in the Nigerian Context. Asian Res. J. Arts Soc. Sci 2(4): (2017), 1-9.

Nigeria, which is the most densely inhabited country in Sub-Saharan Africa also shares in this pot of global environmental problems that require domestic and foreign attention.<sup>23</sup> Various laws have been enacted to cater to the following; Problem faced with the preservation, conservation of the environment, fauna diversity, and promotion of sustainable development<sup>24</sup> and challenges faced by sudden influence, and long term impact on the environment.<sup>25</sup>

Nigeria's government over the years has put in force local laws prohibiting environmental pollution which were domesticated from the international environmental law.<sup>26</sup> However, one can easily date back the need to ensure a safe environment in Nigeria with a trace to the pre-colonial era, as the native peoples had adopted some methods aimed at environmentally sustainable development and protection.<sup>27</sup> Some of these practices were bush fallow and crop rotational system.<sup>28</sup> From 1960 through 1988, the only environmental laws in existence only catered for local and state problems relating to sanitation. However, there were several legislations at the local council and state levels, which made provisions that cater for environmental problems. They were mainly legal and administrative measures to ensure protective actions connecting to environmental cleanliness and problems on community health, caveats, and emergency actions to moderate probable harm in circumstance of natural tragedy and legal framework in Nigerian Law recompensing due respect to world-wide crusade.<sup>29</sup> Furthermore, the oil boom and the attendant effects of industrialization that caused environmental problems led to the declaration of several environmental laws in Nigeria such as; Factories Act, the Crude Oil in Maneuverable Waters Act, 1968, the Regulation of the Movement of Oil on Water 1968, the Petroleum Production and Drilling Act, 1969 as well as the amended version 1973, the regulation of petroleum refining 1974 Act and the 1956 oil pipeline Act.<sup>30</sup>

However, in recent times, there has been little improvement in laws relating to the environment in Nigeria.<sup>31</sup> This is as a result of the fact that there was overheating pressure on the environmental cause of industrial and domestic waste generation.<sup>32</sup> The ecological problem arises from oil spills before crude oil boom and the reduction of the natural forest and wildlife,

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<sup>23</sup> Akamabe U.B., and Kpae G., A Critique on Nigeria National Policy on Environment: Reasons for Policy Review. *IIARD Int. J. Geo. Environ. Manag* 3(3): (2017), 22-36.

<sup>24</sup> Smith S.V.R., *International Environmental Law. Advocate for International Development, Lawyers Eradicating Poverty Legal guide* 4. (2011).

<sup>25</sup> Ladan, M.T., Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria, *8/1 Law, Environment and Development Journal* 8(1): (2012),116.

<sup>26</sup> Liu S.F., The Koko Incident: Developing International Norms for the Transboundary Movement of Hazardous Wastes. *J. Nat. Res. Environ. Legacy* (1991), 121.

<sup>27</sup> Atsegbua L. Akpotaire V. and Dimowo F., *Environmental Law in Nigeria, Theory and Practicals*, 2nd ed (Lagos:Ambik Press, 2004),280

<sup>28</sup> Ikhide E., *Environmental Protection Law, Effurru/Warri, New. Pages Law. University of Lagos, Press* 3 -4 (2007).

<sup>29</sup> Ola C.S., *Town and Country Planning and Environmental Laws in Nigeria*, 2nd ed (Ibadan: University Press, 1984).

<sup>30</sup> Musa A. and Bappah H., Issues and Challenges on Environmental Rights: The Nigerian Experience. *Am. Int. J. Soc. Sci* 3(5): (2014),14.

<sup>31</sup> Mmadu. R., Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel. *Afe Babalola Uni: J Sust. Dev. Law Pol* 2(1): (2013),8.

<sup>32</sup> Mach K.J., Mastrandrea M.D., Freeman P.T., and Field C.B. Unleashing Expert Judgment in Assessment. *Global Environmental Change* 44: (2017), 1-14

the release of industrial waste into the water; seeing water as a receptor tank, earth and the air; automobile emissions, and noise pollution.<sup>33</sup>

These laws were not in place between the years 1960 to 1988.<sup>34</sup> Therefore, it is imperative to note that, Nigeria's environmental laws came into limelight after the 1988 public environmental outcry of the Koko port incidences that made the government to show some concern on the need to conserve the Nigeria environment.

The 1988 Koko toxic waste incident, which exposed the illegal dumping of 3,800 tons of toxic waste from Italy into the Nigerian river port at Koko, a small community in Delta State, provoked a great outcry from the Nigerian populace.<sup>35</sup> The incident led to the death of 30 people and severe environmental pollution. This incident resulted in a swift reaction from the government, leading to the enactment of the Federal Environmental Protection Agency Act (FEPA) 1988.<sup>36</sup>

The polluter pays principle is one of the environmental policies adopted by the Nigeria government for the protection of the environment after the 1988 koko toxic waste incident. The polluter pays principle is enshrined in the Harmful Wastes (Special Criminal Provisions) Act. Specifically, section 12 (1) of the Act provides to the effect that where any damage has been caused by any harmful waste which has been deposited or dumped on any land or territorial waters or contagious zone or exclusive economic zone of Nigeria or its inland waterways, any person who deposited, dumped or imported the harmful waste or caused the harmful waste to be so deposited, dumped or imported shall be liable for the damage.

The scheme of the polluter pays principle is perceptible in the environmental protection regulations made under the provisions of the Federal Environmental Protection Agency (FEPA) Act 1988. It provides that every industry shall install anti-pollution equipment for the detoxification of effluent and chemical discharges emanating from the industry.<sup>37</sup> The 1991 National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations provides to the effect that every industry or a facility shall set up machinery for combating pollution hazard and shall maintain equipment in the event of an emergency.<sup>38</sup> In the sequence of time, the Federal Environmental Protection Act was repealed by the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act<sup>39</sup> and by the

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<sup>33</sup> Saka L. Salihu H.A., Ali A.A., Environmental Degradation, Rising Poverty and Conflicts: Towards an Explanation of the Niger Delta Crisis. *J. Sust. Dev Afr* 9(4) (2007),8.

<sup>34</sup> Gbadegesin O.A., and Akintola S.O., A Legal Approach to Winning the 'Wash' War in Nigeria. *Eur. J. Environ. Pub. Health* 4(2): (2020), 1.

<sup>35</sup> Sylvia F Liu, The Koko Incident: Developing International Norms for the Trans-boundary Movement of Hazardous Waste, *Journal of Natural Resources & Environmental Law* 8(1) 1992,121, 121–22.

<sup>36</sup> Federal Environmental Protection Agency Act Cap F10 Laws of the Federation of Nigeria (LFN) 2004, repealed by the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007.

<sup>37</sup> National Environmental Protection (Effluent Limitation) Regulations, 1991, Reg. 1 (1).

<sup>38</sup> National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations 1991, Reg. 8.

<sup>39</sup> (Establishment) Act, 2007.

provision of section 35 of the Act, these environmental regulations are deemed to have been made by the Act.

The listing of the polluter pays principle as one of the principles that drives the national policy on environment, gives it a key place in environmental protection in all government initiatives. In many cases it is not explicitly mentioned but it is applied in the enactments and regulations for environmental protection.<sup>40</sup> In the oil industry, the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) embodies the polluter pays principle in paragraph 8.1 where it provides that a spiller shall be liable for the damage from a spill for which he is responsible.<sup>41</sup>

The National Oil Spill Detection and Response Agency (NOSDRA) (Establishment) Act 2006 also applies the polluter pays principle on environmental pollution cases. It provides in section 6 (2) and (3) that the failure to clean up the polluted environment, to all practical extent including remediation shall attract a fine of one million naira (N1,000,000.00). The element of the polluter pays principle in this provision is that it makes a polluter responsible for cleaning up polluted environment and not necessarily the fine. Pertaining to the solid mineral sector, the polluter pays principle is also applied. The Minerals and Mining Act 2007 applies the polluter pays principle through three channels; the first channel is by polluters paying for the public administration costs for controlling and preventing environmental pollution; the second channel is by polluters paying for the specified pollution control and prevention measures to be complied with by polluters; and the third channel is by polluters paying for the general pollution control and prevention obligations of polluters.<sup>42</sup>

It is pertinent to mention that the administration costs are those expenses incurred by the environmental agencies in the course of performance of their duties for the purpose of preventing and controlling or managing environmental pollution. These agencies, amongst others are; National Environmental Standards and Regulations Enforcement Agency (NESREA), Mineral Resources and Environmental Management Committee (MREMC) and Mines Environmental Compliance Department (MECD). Consequent upon this, the polluters are made to bear the administration expenses through the prescribed fee that they are made to pay.

Notwithstanding the above legal framework for the application of the polluter pays principle, this paper argues that they remain a mere paper work as there is no effective implementation of the principle in the face of numerous cases of environmental pollution. Apart from these governmental legal frameworks, there is non-internalization of environmental costs by the polluters themselves. Examples of this are the multinational oil industries that are more concerned with production profit than sustainability.

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<sup>40</sup> Jude O. Ezeanokwasa, *Polluter Pays Principle and the Regulation of Environmental Pollution in Nigeria: Major Challenges*, *Journal of Law, Policy and Globalization*, ISSN 2224-3240 (Paper) ISSN 2224-3259 (online) vol.70, (2018). [Core.ac.uk>download>pdf](http://www.iiste.org/journals/download.php?id=2224-3240&file=JLPG-v70n1-10.pdf). Accessed 18 January 2023

<sup>41</sup> Ibid

<sup>42</sup> Ibid

The exploration and exploitation of oil in Nigeria has resulted in long term environmental pollution that has caused serious harm on the health and environment of the people of the oil producing communities. Nigeria's National Policy on the environment recognizes the polluter pays principle. It provides that Nigeria is committed to a national environmental policy that will ensure sustainable development based on proper management of the environment.<sup>43</sup> Currently, the objective of this policy has not been realized due to recurrent environmental pollution problems in Nigeria especially in the Niger Delta region. Pollution incidents are still re-occurring almost on daily basis in communities such as Ozoro community, Uzere community, Irri community amongst others in Delta State, Sagbama community, Peremabiri community amongst others in Bayelsa State and Ineh/Aku communities in Abia State of Nigeria.

The environmental laws and regulations which apply the polluter pays principle under the Nigeria law have the potentials to promote environmental justice but in reality they do not do so.<sup>44</sup> To guarantee effective implementation of the polluter pays principle in Nigeria, the government of Nigeria should draw lessons from other jurisdictions such as the U.S and Netherlands where it has been successfully implemented. This would involve a remodeling of legislative and regulatory provisions to address constitutionalizing environmental rights, creation of special environmental costs, amongst a host of other solutions.<sup>45</sup>

#### **4. Fundamental Human Rights and the Polluter Pays Principle**

Since the future of humanity depends on maintaining a habitable planet, modern environmental law now supports the view that effective measures to protect the environment are crucial to any project for advancing human rights.<sup>46</sup> The Stockholm Declaration 1972 declares that 'man has the fundamental right to live in an environment of a quality that permits a life of dignity and wellbeing and a solemn responsibility to protect and preserve the environment for the present and future generations.'<sup>47</sup> Other UN treaties and documents reemphasize the relationship between human rights and environmental quality.

According to K.S. Ebeku, Several strategies exist for consolidating the connection between human rights and environmental protection. First, it can be done either through the use of constitutional, legal or human right to a healthy/clean environment. Another approach is through the interpretation of existing constitutional rights to reinforce the linkage between human activities with environmental safety. A third approach is the codification of procedural rights, which is promoted as enabling a public interest model of accountability more appropriately in an

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<sup>43</sup> Gina Elvis-Imo, An Analysis of the Polluter Pays Principle in Nigeria, vol.1, No.1 Aculj.acu.edu.ng, (2016). Accessed 8<sup>th</sup> January 2023.

<sup>44</sup> Okechukwu Chimenem Aholu, Does the Application of Polluter Pays Principle in Nigeria's Hydrocarbon Industry Promote Environmental Justice? Ph.D Thesis, Faculty of Law, University of West of England, Bristol, 2021. <https://uwe-repositoryworktribe.com/output/8043695> accessed 8 January 2023.

<sup>45</sup> Ibid

<sup>46</sup> Bodansky D., Brunnee J. and Hey E. (ed), The Oxford Handbook of International Environmental Law, (Oxford University, 2007) 664; Shelton D., Human Rights, Health and Environmental Protection: Linkages in Law and Practice (2002) Health and Human Rights Working Paper Series No. 1.

<sup>47</sup> Stockholm Declaration, Principle 1. 1972.



environmental context.<sup>48</sup> A final approach is to articulate ethical and legal duties of individuals that include environmental protection and human rights.<sup>49</sup>

The primary responsibility for promoting and protecting human rights lies with the state.<sup>50</sup> According to the United Nations Framework Principles on Human Rights and the Environment, this responsibility includes the obligation to prohibit discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.<sup>51</sup>

In relation to Nigeria, apart from the environmental rights (though not enforceable) set out in section 20 of chapter II of the constitution of the FRN 1999 (as amended), chapter 4 of the Constitution is exclusively dedicated to fundamental human rights.<sup>52</sup> The Constitution guarantee the rights to life<sup>53</sup>, the right to the dignity of the human person<sup>54</sup>, the right to property<sup>55</sup> and the right to private and family life.<sup>56</sup> These are the rights most likely to be affected by the impacts of hydrocarbon operations. Thus, Judge Weeremantry of the International Court of Justice (ICJ) noted to the effect that the protection of the environment is a vital part of contemporary human rights such as the right to health and the health itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the universal Declaration and other rights instruments.<sup>57</sup>

## 5. The Rule in *Ryland v Fletcher vis-à-vis* the Polluter Pays Principle

In *Ryland's* case, the principle that was established is that a person who for his own purpose brings on his land and collects and keep there anything likely to do mischief if it escapes, must keep it at his own peril and if he does so, is prima facie answerable for all the damage which is the natural consequence of its escape.<sup>58</sup> The rule of strict liability applies to ensure that the polluter is held liable for damages that occur from his activities irrespective of whether he was at fault or negligent. Liability under this heading of tort is intended purely as a means of loss

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<sup>48</sup> Boyle A, Human Rights or Environmental Rights? A Reassessment, a paper given at Fordham university law school on March 2 2007.

<sup>49</sup> Shelton D., Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized?' 35 (1) DENV. J. Int'l L & Policy, (2008),130.

<sup>50</sup> United Nations Human Rights Council (UNHRC) Res. 17/4 'Human Rights and Transnational Corporations and Business Enterprises (2011).

<sup>51</sup> Bodansky D., Brunnee J. and Hey E. (ed), 'The Oxford Handbook on International Environmental Law (note 696) (2018) 1-11

<sup>52</sup> *Ransome Kuti & Ors. v A.G. Federation* (1985) 8 NWLR (pt. 6) 211.

<sup>53</sup> Section 33

<sup>54</sup> Section 34

<sup>55</sup> Section 44 (1)

<sup>56</sup> Section 37

<sup>57</sup> *Gabicikovo-Nagymaros Project, Hungary v Slovakia* (1997) ICJ Rep 3, ICGJ 65; See also A. A. Cancando Trindade, 'The Parallel Evolutions of International Human Rights Protection and of Environmental Protection and the absence of Restrictions Upon the Exercise of Recognized Human Rights' in A.A.C. Trindade, C.B Leal and Ors (eds) 'Human Rights and the Environment' (Fortaleza Publishers, 2017), 49-92.

<sup>58</sup> *Ibid*: Lord Blackburn; See L. E Nwosu, SAN, 'Oil and Gas Practice: The Role of Nigerian Lawyers, a paper presented at the Annual General Conference of the Nigerian Bar Association held between 24th -30th August, 2003 in Enugu Nigeria published in the Business Law Session (document) on Oil and gas sponsored by OCJ Okocha, SAN, (2003),Pp 20-22.

redistribution.<sup>59</sup> The rule is one predicated on displacing the burden of proof which will ordinarily lie with the victim of environmental pollution. The highly technical nature of oil operations makes it too intricate for a rural fisher man or farmer to comprehend or explain reasons behind the escape of a dangerous substance in the nature of crude oil into the sea or unto land.<sup>60</sup> The rule in *Ryland v Fletcher* has been applied in some Nigerian cases but not to full satisfaction as plethora of pollution cases have been lost, some on the ground of technicalities while others are based of inability of the victims to finance their cases unlike the wealthy industries that will use money to frustrate the case. In *Umudje v. Shell-BP Petroleum Development Company (Nig.) Limited*,<sup>61</sup> The Supreme Court held that liability on the part of an owner or a person in control of an oil-waste pit such as located in the case in hand, exist under the rule in *Ryland v Fletcher*, although the escape has not occurred as a result of negligence. Similarly, in the consolidated case of *Alfred Diете-Spiff & Ors v. Mobil Nigeria Unlimited*,<sup>62</sup> Mustapha J. held that the escape of 100,000 barrels of crude oil from the defendant's 24 inch pipeline from its offshore crude oil production platform into the plaintiff's homestead situate at the south east Niger Delta causing damage to the Plaintiff's communities, activated the rule in *Ryland v Fletcher*.

Reliance on the rule of strict liability however, is predicated on several conditions. The first is that the object causing harm and its escape must relate to a non-natural use of land.<sup>63</sup> The second is that it must be unconnected with an act of God,<sup>64</sup> must not have been caused by the plaintiff<sup>65</sup> or a third party and no statutory provision exist exculpating the polluter from liability.

However, incidences of pollution recorded in the Niger-Delta region of Nigeria were linked to crude oil activities which have not been addressed properly. Several issues on litigations were however downplayed by the powers that be in the Judicial sector.

Whether or not justice can be produced in any given case depends on the impartiality of the judge himself and his philosophy of the laws he is administering (whether they are just or harsh and oppressive) and on the extent of the discretion the laws allow him. Because of this, justice according to the law should therefore be the burden on judges in any given case, thereby ignoring technicality, formalities, and procedural defect that is unfounded within the Nigerian environmental laws. Focusing on technicalities and irrelevant defense against the protection and sustainability of the environmental condition of planet earth can lead to environmental degradation which is inconsistent with the fundamental aims of sustainable conservation and fortification of the environment.

It is needful to state that the Nigerian Government (The Executive, Legislature, and Judiciary) should realize the fact that in the final analysis, the end of law is justice for the protection of our

<sup>59</sup> Cane P., *Atiyah's Accidents and Compensations*' (7th Edition Cambridge University Press, 2006).

<sup>60</sup> Amachree I.T., *Compensation Claims Relating to Oil Spillage and Land Acquisitions for Oil and Gas Fields in Nigeria: A suggested Practical guide*' (Pearle Publishers, 2011), 29-30.

<sup>61</sup> (1975) 5 U.I.L.R (pt. 1) 115.

<sup>62</sup> (2003) 2 F.H.C.L.R 311 at 386.

<sup>63</sup> Kodilinye G., *The Nigerian Law of Tort*, (Sweet & Maxwell Publishers, 1982), p. 114.

<sup>64</sup> *Ibid* (p.119).

<sup>65</sup> *Ponting v. Noakes* (1894) 2 QB 281; *Dunn v Birmingham Canal* (1872) 7 Q.B. 224

environment. They should therefore endeavor to review the constitution, for environmental rights to be enforceable. Furthermore, the government must ensure that there are no strict formalities or technicalities in accessing or enforcing environmental rights in Nigeria.

## **6. Recommendations and Conclusion**

The Polluter Pays Principles is still struggling to gain a general acceptance in Nigeria especially in the industrial circle where pollutants are being generated and the producers also deny responsibility.

It is envisaged that full implementation of the Polluter Pays Principles in Nigeria will lead to sustainable environment but there are limited mechanisms in place to fully assess polluters to be liable to the damage caused to the environment.

The paper recommends the following:

To curtail the rate at which the environment is being polluted, the relevant environmental agencies such as the National Environmental Standard and Regulation Enforcement Agency, Mines Environmental Compliance Department (MECD) etc must develop enforcement mechanism to strictly enforce the polluter pays principle on the use of the environment. In this regard, stringent measures such as environment Agreements, Treaties, Convention, Rule, and Acts must be put in place to check the activities of individuals and industries on the environment.

The National Oil Spill Detection and Response Agency (NOSDRA) (Amendment) Bill 2012 should come on board for strict implementation of the provisions relating to oil spillage and environmental pollution. In particular, section 8 (1) (d) of the National Oil Spill Detection and Response Agency (NOSDRA) makes provisions for minimum liability of the sum of  $\text{N}15,000,000,000$  for the occurrence of oil spill from any onshore facility and or deep-water part. This will go a long way in enhancing effective enforcement of the polluter pays principle in Nigeria.

The Federal Government of Nigeria should develop and implement a mechanism for charging mission fees and fines for all pollutants and effluents which will be based on the quantum of damages caused to the environment. On this platform, the government should impose high charges such as fines, penalty taxes on polluters for non-compliance to environmental standards and regulations.

The problem of insecurity in the society should be properly addressed by the Federal Government of Nigeria especially in the Niger Delta region which is the base of the oil producing communities. Failure to beef up proper security measures would make it difficult to appropriately identify the polluter or who should be held liable for environmental harm or pollution.

The monitoring environmental agencies such as the Mineral Resources and Environmental Management Committee (MREMC), National Environmental Standard and Regulations Enforcement Agency (NESREA), Mining Environmental Compliance Monitoring, Department of Petroleum Resources (DPR), among others should be adequately funded and given clear mandate for effective monitoring with regards to pollution issues.

This paper concludes that environmental pollution is a global problem that has affected the health of humans and their environment. Environmental pollution in Nigeria was basically sourced from the oil industries, being an oil-producing nation and most cases were from oil pollution. However, relevant environmental agencies must shift attention to other areas like agriculture, textile, pharmaceutical, motor, and other related industries that generate pollutants into the environment, to ascertain their level of compliance to environmental polluter pays principle.

It is hoped that when all these measures are put in place, there will be a serene and healthy environment that will enhance development and sustainability in Nigeria.