

X-raying the Bounds of Polluter Pays Principle as an Environmental Protection Tool in the Nigerian Oil and Gas Industry

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D.O.I: 10.56201/ijgem.v9.no1.2023.pg1.16

ABSTRACT

This paper takes a cursory look at the concept of 'Polluter Pays Principle', PPP as an environmental protection instrument in the Nigerian oil and gas industry. It found that environmental pollution is a major challenge confronting the Nigerian oil and gas industry and reiterated that the concept remains an invaluable tool for restoring the environment- in that compensation was essential to the restoration of the environment whenever there is any form of environmental pollution which are direct consequences of oil exploration and production activities. This study argues that the lingering challenges of oil pollution in the Nigerian environmental space in the oil-producing communities would have been adequately catered for if the laws were not obsolete and anachronistic. This study takes a multi-disciplinary approach that covers law, environmental management and toxicology. A number of recommendations were therefore suggested to make the principle more effective and minimise the deleterious effects of environmental pollution.

Keywords: Environment, Pollution, Polluter, Protection. Legislation, Tool, Oil, Industry.

Introduction

In the quest to protect the environment by using law as a workable tool for restoring the environment, it was contended by critical stakeholders in the Nigerian oil and gas regulatory space that compensation was essential to the restoration of the environment whenever there was any form of environmental pollution which was a direct consequence of oil exploration and production activities¹. The need to recompense the inhabitants of a polluted community was borne out of the realisation that environmental pollution was an unavoidable reality of oil

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¹Gaucci G 'Oil Pollution at Sea: Civil Liability and Compensation for Damage' England: John Wiley and Sons Ltd [2017].

exploration activities. This underlining remedy to compensate the victims of pollution was what became the ‘Polluter pays principle.’²

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

*“If anyone intentionally spoils the water of another...let him not only pay damages, but purify the stream or cistern which contains the water.”*³

The PPP is thus aimed at ensuring that the costs of environmental degradation that is a result of polluting activities are fully borne by the person(s) responsible for the pollution⁴. The Polluter Pays Principle was one of Nigeria’s methods of attempting to put an end to the pollution that resulted from oil production in the Niger Delta and it was introduced into the legal regime through the Oil Pipelines’ Act.⁵ It is to the effect that a Polluter must pay for any clean up exercise of a leak, a spill or discharge from its facilities to the environment and also compensate the victims who suffer from the pollution caused⁶. It is however instructive to note that as laudable as this principle of compensation seems, it has achieved very little in reducing environmental pollution in Nigeria or even restoring the environment by cleaning up the polluted sites.

The PPP is a principle of the Organisation for Economic Cooperation and Development, OECD. It is also contained in The Convention on Oil Pollution Preparedness, Response and Cooperation which Nigeria ratified on the 13th day of May 1995 and in the 1992 Rio Declaration, Principle 16⁷.

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

A series of problems arise in the bid to enforce this principle with a view to combatting the problems of environmental pollution in Nigeria. They include:

1. The Challenge of Correctly Calculating and Estimating the Assessment of Damages

The quantification of damages is a necessary component of the compensation process in Environmental law. Thus, whether the damage complained of is reversible; i.e. capable of being cleaned up, whether it has a long term effect and the damage is not noticeable instantly, whether there was in fact a historical antecedent of prior spills in the area and the multiplying effect of damage based on the perception of the affected inhabitants are issues the PPP encounters⁸. For instance, the pollution of a river might mean more than the deprivation of potable water to the inhabitants but a destruction of aquatic animals and damage to the source of their livelihood. This situation is more worrisome as the Nigerian law did not specify the

² Environmental Law Research Institute *Report* (ELRI 2011) A Synopsis of Laws and Regulations on the Environment in Nigeria <<http://www.elring.org/newsandrelease2.html>> Accessed 21st October, 2022.

³ Okenabirhie T.O, ‘Polluter Pays Principle in the Nigerian Oil and Gas Industry: Rhetorics or Reality’ citing “The Dialogues of Plato: The Laws, Vol. 4, Book 8, Oxford; Clarendon Press (4thed.) 1953. <<http://www.dundee.ac.uk/cemplp>> Accessed 18th October, 2022.

⁴ Susan Wolf and Anna White, Principles of Environmental Law (3rd ed Routledge Cavendish Publishing 2001) p. 16.

⁵ Oil Pipelines Act LFN 1990.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Fagbohun O, (2010) *The Law of Oil Pollution and Environmental Restoration: A Comparative Review* (Odade Publishing 2nd ed), P 75.

mode of payment, the scope and the value of damages payable but it merely provides that the court shall fix the damages⁹.

2. The Problem of Correctly identifying the Specific Polluter with a view to punishing same.

The definition of PPP is to the effect that there should a polluter, an identifiable pollution activity and that damage must have occurred to the environment which must be compensated by the identified polluter. Identifying the polluter has become difficult in Nigeria in situations where the pollution is not caused by the oil company alone. An oil company who pollutes with the contributory negligence of another or the malicious act of a third party is not deemed a polluter in Nigeria¹⁰. The fact that the onus of proof of liability is also placed on the oil operator has therefore made it very difficult to implement PPP in Nigeria.

3. The Unenforceable Character Of the PPP

The PPP like most international law provisions are simply declaratory rather than prohibitive. They often lack the compulsion tone of national legislative provisions. Article 16 of the Rio Declaration merely provides that National Authorities should 'endeavour to promote' PPP. The wording of this plea is clearly not assertive and this had adversely affected its implementation. This is particularly so, as the Nigerian constitution provides that International obligations in treaties be ratified by the National Assembly prior to enforcement¹¹.

4. The Lack Of Clarity of the Right Victim to be Compensated in the PPP

The imposition of taxes and charges on the Polluting IOCs has not achieved much in restoring the environment in line with the intendment of PPP. The fact that the Niger Delta inhabitants have been divested of their lands by the Nigerian law¹² has made the compensation not payable to the rural dwellers in the community but to the federal Government. This compensation had only increased the Government revenue whilst a great chunk of it has enriched Public servants in Nigeria rather than restoring the environment that is perpetually plagued by pollution.

5. Problem of Insufficient Financing of Clean Up Activities:

There is financial incapacity of small and medium scale oil companies who pollute the environment to compensate the victims and clean up the polluted sites. Even financially capable oil companies refrain from making thorough clean-up of the spill but employ jobless and indigent indigenes of the Niger Delta to clean up by scooping the spilled oil into buckets with a spade¹³. This is particularly so because it is cheaper to employ cheap labour to carry out the clean-up activities, even those less than effective.

6. Sabotage of Oil-Production Facilities

Many oil companies in Nigeria escape liability by claiming that the pollution was a consequence of sabotage of their oil production and transportation facilities. This is a tenable

⁹ Section 19 (2), (3), (6) Oil Pipelines Act, 1990.

¹⁰ Section 11 (5) (C), Oil Pipelines Act, 1990.

¹¹ Section 12, 1999 CFRN.

¹² *Ibid.*

¹³ Odiase A, 'Environmental and Other Issues Relating to Oil Pollution in Nigeria' [2004] OGEL 2.

defence under the Nigerian law because oil spillage caused by sabotage does not give rise to the payment of compensation under Nigeria's environmental law regime¹⁴. The Oil Pipelines Act which exempts the oil companies from the payment of compensation whenever an oil spill results from the malicious act of a third person has become a viable defence for polluters rather than the exception to the rule. Oil companies claim that a greater percentage of oil spills in the Niger Delta was a result of sabotage¹⁵ and they equally escape liability by proving that the oil spill was a consequence of default on the part of the injured victims¹⁶.

7. Problem of Proof

Under the Nigerian Legal system, there is a need to prove causation by expert evidence¹⁷ as proof of damages¹⁸ both for general and special damages or the alleged pollution would not be entertained by Nigerian Courts¹⁹. The financial incapacity to procure the services of an expert by many poor pollution victims who obviously could not afford the services, naturally leads to the end of their pollution matters.

All these challenges point to the fact that the Polluter pays principle has not been effective in addressing pollution challenges in the Niger Delta largely due to poor enforcement mechanisms.

Challenges of Enforcement of National Environmental Protection Laws

Apart from the lingering challenges confronting the compensation regime in the Nigerian oil and gas industry, there is a lack of political will of the Federal Government of Nigeria to enforce environmental standards on oil companies. The overwhelming dependence of the federal government of Nigeria on oil rent as its main source of revenue and neglect of other critical sectors of the economy was highlighted as depriving the Federal Government of the requisite nerve to enforce its environmental standards to defaulting oil companies in the quest for oil pollution abatement.²⁰ The Scholar stated further that this remains perhaps the greatest threat to an effective environmental culture in Nigeria with special focus on the petroleum industry and the negative environmental implication of oil exploration activities.²¹ The federal Government of Nigeria's role as an investor, a regulator and an enforcer has not only led to inefficiency and mismanagement in the oil sector but it has affected its sincerity in tackling pollution in the Niger Delta.

Furthermore, the long years of military rule in Nigeria prevented her from having a proper legislature. Most of the laws governing the operation of the petroleum industry and protecting the environment were either inherited from her colonial masters or enacted since the first Republic; they are therefore old, unrealistic and out of tune with the modern reality of the Petroleum industry. These sets of laws could not be reviewed and a greater percentage of the

¹⁴ Section 11 (5) (c) Oil Pipelines Act 1990.

¹⁵ Oil Spill in the Niger Delta <<http://www.oilspill.com>> Accessed 17th September, 2022.

¹⁶ *Umudje V Shell BP Nigeria Ltd* (1975) 11 SC 155.

¹⁷ Section 56, Evidence Act, LFN 2004; *Seismography Service (Nigeria) Limited V Ogbeni* (1976) 4. S.C 85 p 98-101.

¹⁸ *Obanor V Obanor* (1976) 2.S.C 1 P 5-6.

¹⁹ *Odumosu V African Continental Bank Limited* (1976) 11 S.C 55 P 67-69.

²⁰ Oluduro O, 'Oil Exploration and Human Rights Violations in Nigeria's Oil Industry' <<http://www.africafocus.eu/file119>> Accessed 12th September, 2022.

²¹ *ibid.*

other legislations were Decrees hurriedly drafted by the Supreme military council with no requisite legislative skills.

Official corruption and graft in the Petroleum Industry also led to a lot of compromise of environmental standards and endless pollution in the Niger Delta. The Petroleum industry is a very buoyant industry, civil servants who are supposed to maintain high integrity and ensure that polluters pay for their pollution end up receiving bribes because they are not well remunerated.

The Problems of the Statutory Frameworks for Pollution Control

The Petroleum Act 1969 empowers the Minister to make regulations for the prevention of pollution of water courses and the atmosphere²². The Petroleum Regulations 1969 was then made and it contains wide omnibus provisions on pollution in Regulation 25. This regulation merely implores the oil licensee or the lessee to take precautions as practicable as possible by providing up-to-date equipment to be approved by the DPR Director in order to prevent pollution of inland waters, the territorial waters of Nigeria or the high seas by releasing oil into them which might contaminate them and also take prompt steps to control any such pollution and if possible, end it.

Two notable defects have been pointed out in the above legislative provision; the first is that it merely imposes an unclear legal duty on the operator who is only enjoined to take ‘prompt steps to control and if possible, end’ the pollution in question; the second defect is the fact that the regulation did not mention land as part of the environment not to be polluted²³. This writer aligns his critique with this highlighted defects and reiterates that the provision was not only prescriptive but it seems not to take into consideration of the fact that since pollution was an inevitable occurrence in the petroleum industry, legal imperatives should be devised to compel oil operators to clean up spills rather than merely imploring them to adopt all precautionary steps to prevent pollution and try to control the pollution when convenient. Another defect is the fact that pollution was only addressed in the Petroleum Regulation which is a guideline setting out what to do and not an Act with the requisite force of law.

The Petroleum Regulations equally imposed a fine of 100 naira, the revocation of operating license or an imprisonment option for non-compliance and leakage of petroleum products²⁴. The imposition of 100naira fine on a profitable multi-billion dollar IOC is not only ridiculous but laughable. There is no likelihood that the license of the polluting oil company will be withdrawn if they default because of the commercial implication of such revocation as Nigeria depends on oil proceeds as the mainstay of her economy. The fact that pollution goes on with impunity without a single revocation of an IOC’s license for polluting the Niger Delta community since her Petroleum exploration and consequent pollution history buttresses this assertion.

The option of imprisonment is also deceptive and unrealistic. The specific officer to be imprisoned was not mentioned in the Regulation. It is hereby contended that the Nigerian government cannot lawfully institute criminal actions or enforce penal provisions against Directors of IOCs who are mostly foreign nationals without recourse to rules of international

²² Section 9 (1) (b) (iii), Petroleum Act 1969.

²³ Omorogbe, *supra*.

²⁴ Petroleum Regulation, 1967.

law and the bilateral investment treaties, BITs or multilateral investment treaties, MITs which naturally protect investor's rights in the host countries²⁵. The Petroleum Act that established this regulation is yet to be repealed despite its old and unrealistic provisions, but it is now CAP P10, LFN 2004. A new Act, the Petroleum Industry Act is to be made for the whole industry which aims to harmonise all the over 78 legislations regulating different sectors of the industry into a comprehensive legislation, but even the Petroleum Governance Act recently passed by the Nigerian National Assembly still has teething problems that do not take into cognisance majority of the identified challenges²⁶.

Problems of the Institutional Frameworks Responsible for Regulating the Petroleum Industry

The Challenges Confronting the Department of Petroleum Resources, DPR

1. Duplication of Institutional Responsibilities:

The dual capacity of DPR as the Nigerian Government's agency for encouraging the full development and growth of petroleum resources, regulating the petroleum industry as a whole and securing the protection of Nigeria's investments of the petroleum industry on one hand and the responsibility of enforcing environmental standards, ensuring compliance and administering the environmental protection regulations for the petroleum industry on the other hand has raised serious concerns for conflict of duties.²⁷ Whilst a scholar²⁸ contended that there exists a clear potential for conflict duties due to the vesting of the responsibility of encouraging the full development of Nigeria's petroleum resources and the enforcement of environmental regulations for the oil industry in the same agency of government. He said, when considering the fact that oil remains the mainstay of Nigeria's economy, there exists a genuine concern that in the exercise of DPR's regulatory powers, environmental quality might be sacrificed on the premise of the nation's commercial interests. It is further contended that the full development of Nigeria's petroleum resources is a more essential objective to DPR than the enforcement of environmental standards which seem to appear as an ancillary function.

2. Inadequacy and Irrelevance of the laws:

The agency's performance has equally been greatly hindered by the lack of regulatory powers in explicit legal provisions that would enable them to institute legal actions against pollution offenders.²⁹

3. Human and Technical Support Challenge:

The lack of technical equipment for effective monitoring and surveillance of oil facilities and maintenance of personnel in oil rigs offshore is also a bane to the effective discharge of DPR's regulatory functions.³⁰ The Agency often relies on the data provided by IOCs and the information furnished it by their personnel on ground which is often times in favour of the

²⁵ Rudolph Dolzer, Christopher Schreuer, *Principles of International Investment Law* (Oxford Publishing 2012).

²⁶ Petroleum Industry Bill Extracts. <<http://www.nnpcgroup.com/PublicRelations/PetroleumIndustryBill.aspx>> Accessed 19th August 2022.

²⁷ Dolzer, *supra*.

²⁸ *Ibid*.

²⁹ *Ibid*.

³⁰ Fagbohun, *supra*.

IOCs.³¹The agency is also not imbued with both the capacity to effectively generate the data received and the technological capacity to verify the data obtained. This has greatly brought down the quest to enforce an enviable environmental quality standard of oil and gas production in Nigeria.

4. Inadequate funding and logistics challenges:

A Scholar³²blamed the agency's ineffectiveness on lack of funding. He stated that the agency needed to be properly funded so it can effectively monitor oil production sites as part of its oversight functions. Lack of adequate funding led to its institutional incapacity, lack of requisite human capacity and inadequate facilities for proper monitoring.

The Challenges Confronting NOSDRA as an Agency of Government

1. Conflict of Duties, Roles, Responsibilities and functions:

The duplication of roles of DPR and NOSDRA has contributed to bureaucratic conflicts and a consequent drop in effectiveness of the functions of the agencies. There is a serious concern of unclear responsibility specification in enforcing pollution abatement laws by both agencies with each Department assuming the other would take responsibility for a defective standard or any other pollution or poor environmental quality in the oil and gas industry. Widespread apprehension and fight for administrative superiority remains a prominent feature in the discharge of their functions.

There is an unhealthy underlining battle for supremacy between both agencies; whilst the DPR presumes itself as an autonomous Government agency with central regulatory powers to coordinate the petroleum industry in general and administer the existing environmental regime whilst seeing NOSDRA as a small parastatal of government that grew out as an arm of the Federal Ministry of Environment, Housing and Urban Development and which must receive orders and report from it when any issue relating to oil spillage is detected on site by any of its personnel, the latter, NOSDRA conceives DPR as usurping its powers and being a meddlesome interloper encroaching on its regulatory responsibility of detecting oil spills and responding quickly to same across the country.³³There is thus a 'passing the buck syndrome' and a conflict of roles between the two agencies which have altogether prevented both agencies from achieving an effective pollution control and management of polluted areas.

2. Lack of independence of the NOSDRA agency:

There is a clear risk of the agency's lack of independence due to the appointment and composition of the members of its Governing Board.³⁴ The Chairman and other members of the Governing Board are appointed by the President on the recommendation of the Minister of Environment, Housing and Urban Development.³⁵There is a curious change in this appointment, approval benchmark and composition from the proposal in the draft bill that created the agency which had in Section 6(1) of the Bill made the appointment of the

³¹ Delta Oil [News:The Problems with DPR](#), 15 January 2020 @ p.15

³² Oji U.J, 'An Appraisal of the Legal Frameworks for the Control of Environmental Pollution in Nigeria' [2012] CLB 38.

³³ Telephone interview with Mr..D.EAgbonkhese: Former Head, Corporate Services, Department of Petroleum Resources, Warri, Zonal Office, Delta State, Nigeria 26th October, 2020.

³⁴ Section 2(4) NOSDRA Act 2006.

³⁵ *ibid.*

Chairman and members subject to the approval of the Senate. This seems a more plausible arrangement for sufficient legislative checks and balances unlike the current arrangement which makes it seem like an appointment by the executive with the executive in mind.

Moreover, the appointment arrangement would have served as a proper check and scrutiny in order to ensure that the calibre of people of impeccable integrity who would not compromise environmental standards for primordial benefits and pecuniary gains are duly appointed. More curious is the fact that the Minister would appoint the Chairman and the representative for the Environment Ministry and other bodies indicated under section 2 (2) (b). This reduces the chances of independence of the members and their capacity to maintain their integrity in a monetized polity with high incidence of official corruption like the Nigerian State. The proposal in the draft bill to have representative of the oil-producing states and two persons from non-governmental organizations³⁶ on the Board of NOSDRA was also ignored. Adhering to this recommendation would have created a more broad-based NOSDRA, created the room for enhanced community participation, created the platform for cross-fertilization of ideas and given the members of board direct local information, deep insights and revelation regarding the oil spills in their respective communities including exposing those conniving to plague the communities with pollution for personal benefits.

The inclusion of these primary stakeholders was advocated as capable of strengthening the composition of the board³⁷ Section 9(1) (c) of the Draft Bill stated that the DG of the Agency should be an officer equivalent to the rank of a Chief Executive Officer in the Nigerian National Petroleum Corporation, NNPC, but this did not see the light of the day. This would appear to be a better arrangement as the Director-General with a lower status to that of the CEO of NNPC will neither be able to muster the requisite strength to checkmate the excesses of his superior nor be imbued with the capacity to effectively regulate and sanitise the petroleum industry by reducing oil spills and other environmental pollution activities of NNPC which itself is a major partner to all the major oil and gas companies' projects and a mega player with profit-making motives in the industry. This is another setback in the bid to effectively address the environmental pollution in Nigeria by adequately enforcing the existing environmental protection laws.

3. High Incidences of Bribery and Corruption within the Agency:

The power of the agency to accept gifts³⁸ is questionable. It is equally disturbing that a sensitive regulatory agency like NOSDRA is legally allowed to receive gifts even though funding is important for the effective realization of its policy objectives and for an efficient discharge of its regulatory responsibilities. There is a great tendency for abuse as all forms of bribes, incitements, inducements and compensations for compromise could find themselves in the agency's coffers as 'gifts', considering the volume of cash available in the industry and the amount of profits to be made if environmental standards are compromised.

4. Conflict of functions:

NOSDRA as a parastatal is also facing a bureaucratic clash of functions regarding the regulation, maintenance, ensuring compliance with existing environmental regulations relating to the oil industry with DPR which is also saddled with similar regulatory

³⁶ Part 4 of the NOSDRA Bill Draft.

³⁷ *Ibid.*

³⁸ *Ibid.*

responsibility in terms of its functions to preserve oil resources of Nigeria, including preventing leaks, spills and maintaining oversight functions for the Petroleum industry as a whole. The DG of NOSDRA once disclosed to the Nigerian Senate Committee on Environment and Ecology,³⁹ that the agency was hampered in the effective discharge of its activities by an unhealthy clash of official functions with DPR. This is largely predicated on the conflict arising from the agency having specific responsibilities that have overlapping similarities with DPR's general responsibilities. This conflict should not have arisen because section 19 (2) of the NOSDRA Act specifically confers the exclusive right on NOSDRA as the lead agency for all matters relating to oil spills' response and management.

5. Absence of a strict legislative provision to prosecute oil companies and their personnel:

NOSDRA is limited in its oil spill detection, response and environmental clean-up of impacted sites because it does not have prosecutorial powers under the enabling Act. It is only empowered by the Act to impose small monetary fines on oil spillers; this is why pollution continues unabated in the Niger Delta by the oil companies operating thereon. This unwholesome 'pat on the wrist' is regrettable and unfortunate. The then Chairman, Senate Committee on Environment and Ecology, Senator Abubakar Bukola Saraki called for a review of the NOSDRA Act 2006⁴⁰ after expressing dissatisfaction with NOSDRA's call on AGIP Company Ltd to pay the prescribed 1million naira as fine for AGIP's alleged failure or refusal to contain, stop and clean up an oil spill it caused at its OB/OB Gas plant in Obrikom, Omoku in Rivers' state of Nigeria⁴¹. Without an enabling law to prosecute environmental offenders or impose commensurate fines in the true spirit of the PPP, oil spillages and other forms of environmental degradation will continue unchallenged in the Niger Delta. For instance, oil spills in the oil-producing Niger Delta community has done serious harm to both the inhabitants and the ecosystem. An estimated 15 million barrels of crude oil has been spilled in the Niger Delta since the inception of oil exploration in the region from the year 1956⁴². Regrettably, even oil spillages that occurred over 4 decades ago are yet to be cleaned by the oil companies that spilled them. This regrettable trend continues unchallenged because IOCs take advantage of Nigeria's weak laws and her lack of a workable enforcement mechanism.

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

³⁹ NOSDRA DG Laments Clash of Functions with DPR. <<http://www.nosdra.org/index.html>> Accessed 26 August, 2022.

⁴⁰ Oil Spill: Nigeria at the Threshold of a New Era. <<http://www.vironewsigeria.com/2013/02/07>> Accessed 12th August 2022.

⁴¹ *ibid.*

⁴² United Nations Environmental Programme Report: 'Ogoniland Oil Assessment Reveals Extent of Environmental Contamination and Threats to Human Health'. <<http://www.unep.org/newscentre/default.aspx>> Accessed 4th November, 2022.

The Nigerian Federal Government's Drive for Better Delivery at DPR

The Department of Petroleum Resources is currently implementing a real-time regulatory regime with the installation of production-monitoring facilities in oil productions across the country.⁴³ This digital monitoring system will ensure the agency's implementation of the Offshore Personnel Accountability System, (OPAS).⁴⁴ It comprises card readers that have been installed at all embarkation points and the collation of the list of personnel to work thereon is in progress. The department has also populated its offshore Safety Permits server with biometric data to capture the personal details of the Personnel on site.⁴⁵ The agency believes this will go a long way in timeously detecting any ill standard that can cause oil spills in the production sites.

In the year 2011, a Memorandum of Understanding was in the same vein signed between Norway and Nigeria pursuant to which the Norwegian Petroleum Department, NPD would assist the DPR in its skills-deficit and ICT drought which is much needed for a better environmental quality and oil pollution abatement. This MOU aims to meet the requirements of the complex modern oil industry that the DPR is billed to regulate. Further, a National Data Repository (NDR) which will provide the requisite backbone of technological infrastructure that is much needed to capture, store, manage and verify the obtained data furnished by oil companies in order to achieve a more effective regulation of the petroleum industry has been proposed.

Conclusion

In conclusion, the provisions in Nigeria's legal regime for ensuring the payment of adequate compensation by international and local oil companies who pollute the environment as a result of their oil exploration activities has been largely hampered by a number of regulatory setbacks and bottlenecks. Moreover, the laws are either too obsolete, anachronistic and out-of-tune with modern realities. Some of the laws are far-between, uncoordinated and disjointed. A prompt review of the laws is hereby advocated to enable the timeous minimisation of the deleterious effect of oil production activities within the Nigerian oil space and ensuring the payment of fair, adequate and regular compensation to victims of oil pollution. This study has also proven that the regulatory agencies have been largely ineffective in regulating the oil and gas industry and addressing pollution and other environmental challenges in Nigeria's oil-producing communities. It has also shown that the Polluter pays Principle has been largely ineffective as a compensation mechanism for restoring the environment and bringing to the fore the reality that the involvement of the federal Government in oil exploration and production has affected its capacity to effectively enforce compliance with the existing regulations. Consequently, a more robust, clear and veritable mechanism for emplacing the Polluter Pays Principle as an invaluable tool for environmental protection enforcing environmental protection legislations is hereby advocated.

Recommendations

1. A comprehensive review of the Regulatory Acts operating in the Oil Industry:

⁴³ DPR Nigeria News Bulletin <http://www.dprnigeria.com/in_the_news.html>@p 2 Accessed 28th October, 2022.

⁴⁴ *ibid.*

⁴⁵ *ibid.*

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

2. Amendment of NOSDRA Act to review who can be NOSDRA DG:

The Law establishing NOSDRA⁴⁶ should be amended to activate and embrace the introduction of the jettisoned Section 9 (1) (c) of the draft Bill which made the rank of the agency's Director-General to be an officer equivalent to the rank of a Chief Executive Officer. It is also hereby suggested that the Agency's Director should not be a staff of the Petroleum Ministry who will naturally have friends in the industry in order to reduce the propensity for compromise of standards, assist the refusal to compromise to pay compensation and curb any unhealthy affinity, but a person of impeccable character from the law enforcement agencies, or the code of Conduct Bureau. The Economic and Financial Crimes Commission, (EFCC) and the Independent Corrupt Practices and Related Offences Commission, (ICPC) are some other recommended agencies that the DG of NOSDRA can be appointed from.

3. A Merger of DPR and NOSDRA should be explored to harmonise their functions with a view to ensuring the Payment of Compensation to Pollution Victims:

It is hereby recommended that there should be a closer collaboration between the Department of Petroleum Resources DPR and NOSDRA with a view to collectively enhancing their effectiveness. The cooperation can be better achieved through a merger of both agencies into a Department for Environment and Oil pollution Control. Both agencies' core values and functions should be streamlined to overcome the conflict of functions, duplicity of roles and overlap of duties. This new arrangement will not only enable the industry to have a comprehensive regulatory body that all the oil companies will relate with in lieu of the prevalent disjointed multiple agencies that are inadvertently causing a confusion of regulation and sectoral administration in the bid to achieving an enforcement of the environmental regulations in Nigeria, streamlining the coordination of the prompt payment of fair and adequate compensation to oil pollution victims and consequently making room for a more effective environmental protection regime. It will also help in cutting government expenditure and overhead on personnel, as the government is arguably paying double emoluments for similar job specifications in the two agencies. The NNPC should remain as the agency for the development of Nigeria's petroleum resources with commercial interests only in order to prevent the prevalent conflict of duties.

4. Staff Retraining and Human Capacity Development:

The staff of the agencies must be imbued with the capacity for effectiveness, scientific and environmental expertise in the calculation of adequate compensation to oil pollution victims, bureaucratic competence, the will not to compromise on quality, propriety, environmental

⁴⁶ National Oil Spill Detection and Response Agency (Establishment) Act 15 of 2006.

standards, uncompromising integrity and the central core values of the organization must be to achieve equity, fairness, environmental restoration, efficiency, participatory decision-making, sustainable development, probity, transparency and accountability.

5. Abolition of the gift receipt powers of NOSDRA

The provision for power to receive gifts of NOSDRA should be expunged in order to reduce the likelihood for abuse and propensity for graft and official corruption. An increase of government subvention, an establishment of an 'Environmental Trust Fund' or an 'Oil Spillage Liability Trust Fund' and adequate funding of the agency is hereby advocated in order to ensure the smooth and effective running of the agency and increase its financial/economic independence. Section 11 of the NOSDRA Act 2006 which granted the Agency the power to maintain a fund⁴⁷ in order to prosecute its functions and also be given a take-off grant fund from the Federal Government, annual subvention from the consolidated revenue; counterpart funding from states and local Government, loans from national, bilateral and multilateral agencies; and other internally generated revenues, should be extended to include the receipt of the payment of all fines by oil spillers and polluters including corporate bodies and their personnel. Increased subvention is hereby thoroughly suggested to enable the agency to monitor, move, visit, detect and respond to oil spills across the country. The raised funds can then be deployed for the clean-up of pollution sites in the Niger Delta.

6. A Comprehensive Review of the NOSDRA Act 2006 to enable NOSDRA to prosecute Oil Spillers:

The National Oil Spill Detection and Response Agency (Establishment) Act 15 of 2006 should be comprehensively reviewed to empower NOSDRA to prosecute oil spillers. The imposition of a paltry 500,000naira and 1,000,000naira respectively for spilling and failing to clean-up a polluted area is greatly inadequate and incapable of addressing such a grievous environmental crime that degrades the environment and inflicts deleterious injuries to the health of the oil-producing community inhabitants. It is hereby recommended that the Act be reviewed to empower the agency to prosecute offenders (the personnel) with imprisonment and the fine should be increased to a minimum of 5billion naira for oil spill and 10 billion naira for neglecting to clean-up the spill. The imposition of these huge amounts will go a long way in preventing oil spillages where preventable, reduce complacency and negligence, it will ensure that oil companies operating in Nigeria will exercise all due diligence in preventing oil spillages and dissuade them from refraining to clean up spills. The NOSDRA enabling Act should be amended to conform to best international environmental standards that are capable of protecting the Niger Delta environment and making it an oil-spill-free community. The new Act should compel all oil companies that own, run or use oil pipelines, storage vessels or tanks to report any leaks, spill or accidental discharge to the agency immediately it occurs, and the failure to do so should attract a huge monetary fine for each day the spill persists.

7. The Submission and Implementation of an Action Plan for Remediation and Restoration:

The National Oil Spill Detection and Response Agency should be empowered to compel the party responsible for oil spill to submit an action plan for remediation and restoration of the

⁴⁷ Section 11, NOSDRA Act, 2006.

polluted site within one week of spillage detection. The plan should timeously be implemented in order to achieve the restoration of the polluted community. The failure to submit the action plan by the spiller within one week of the occurrence of the oil spillage should also attract a costly fine.

8. Investment in capacity development for better monitoring and surveillance:

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

9. Further and Better Research in Scientific and Management Approach to Environmental Restoration and Remediation of Pollution Sites:

The law is generally limited and incapable of adequately determining the extensity of damage and pollution caused by a polluter and as such, a multi-disciplinary approach must be evinced in such a way that scientific data must be collated to determine the quantum of environmental pollution occasioned, so as to impinge the liability for remediation and payment for pollution on them accurately.

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