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Legal Response to Oil Pollution in the Maritime Environment: A Comparative Analysis of Nigeria, United Kingdom and the United States

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Abstract

This article undertakes a comparative analysis of the legal response to oil pollution in the maritime environment in Nigeria, the United Kingdom and the United States. Major oil spills in these three states are examined with the aim of highlighting how each state responded to the pollution. In Nigeria, oil spills that are examined include: Texaco'sFuniwa-5 oil well spill of 1980 and the Mobil Qua-Iboe oil spillage of 1998. As regards the United Kingdom, the Torrey Canyon incident and other spills are examined. For the United States, the Ixtoc 1 spill of 1979, the Exxon Valdez spill of 1989 and the Deepwater Horizon spill of 2010 are examined. These spills were often due to accidents and negligence during oil drilling and transportation. The United Kingdom and the United States had more robust legislation and policies that spelt out in advance how companies were to respond to oil spills. They also had effective mechanisms for the implementation and enforcement of the response to oil spills. This was the case even in situations, such as the Torrey Canyon incident, in which the oil spills was from a vessel transporting crude oil in the international waters. In Nigeria, legislation on oil spills were often outdated andin conflict with each other. They were also poorly implemented due to inter alia inadequate funds, lack of political will on the part of the government and the fact that the Nigerian government is in Joint Venture agreements with the Multinational oil companies.

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1.0. INTRODUCTION

Oil and Gas has permeated all aspects of the human society in the last century.[1] It has shaped how wars are fought, the way people travel and transport goods, the methods of communication, the way goods are manufactured among others. Today, crude oil's dominance of the energy sector can be seen in the fact that, oil and gas together contributed 38.8% of the global primary energy consumption in 2015.[2] From an environmental perspective, oil and gas exploitation has come at a huge cost. Almost all aspects of the environment (soil, sea, air, among others) has been adversely affected by oil and gas exploration and production activities. It has been aptly summarized by Akaakar that:

> There are scarcely any other mineral resources that is more bedevilled with local, international legal and economic problems than oil. Oil is a dual aspect of commodity commonly referred to as 'black gold.' It represents affluence and what is good but at the same time it is associated with evil. It spells doom, loss of livelihood and in some cases death. Oil brought enormous revenues…but it has also brought along with it environmental hazards.[3]

Globally, there is growing concern on the impact of oil and gas exploitation on all aspects of the environment. Oil spills which often are as a result of accidents and negligence during oil exploration, drilling, transportation, processing and storage adversely affect the environment.[4]

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[1] S Reyna, A Behrends, 'The Crazy Curse and Crude Domination: Towards an Anthropology for Oil' in A Behrends, S Reyna, G Schlee, (eds) *Crude Domination: An Anthropology of Oil* (Berghahn Books 2011) 3 at 3-4.

[2] 'BP Statistics of World Energy Review 2016' <*https://www.bp.com/.../bp.../statistical_review_of_world_energy_full_report_2016.pdf*>Accessed 8 January 2022.

[3] A. Akaakar, 'Legal Control of Pollution Rehabilitation: The Poverty of Petroleum Law in Nigeria' RVSJB (1994) (1) 216

[4] O. J. Olujobi, O. A. Onyewunmi, A. E. Onyewunmi, 'Oil Spillage in Nigeria's Upstream Sector: Beyond the Legal Frameworks' International Journal of Energy Economics and Policy (2018) (8)(1) 220

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By examining major oil spills in Nigeria, the United Kingdom and the United States, this article analyses the impact of oil and gas pollution on the maritime environment and undertakes a comparative analysis of the effectiveness of the responses to oil pollution of the maritime environment in Nigeria, the United Kingdom and the United States.

2.0. GENERAL OVERVIEW OF MARITIME ENVIRONMENT

In order to understand what the maritime environment is, it is necessary to understand what the environment is. The concept of the environment has been defined severally. There are definitions of the environment in domestic statutes. The Environmental Impact Assessment Act 1992[5] of Nigeria defines the environment as: 'the component of the earth which includes:

a. Land, water, air, including all layers of the atmosphere;
b. All organic and inorganic matter and living organisms
c. The interacting natural systems that include components referred to in paragraphs (a) and (b).'[6]

Similarly, section 1(2) of the Environmental Protection Act of the United Kingdom 1990 defines the environment as: 'consisting of all or any of the media of air, water and land and the medium of air includes air within buildings and air within other natural or man-made structures above or below the ground.'
The Environment has also been defined internationally. According to the European Commission, the concept of the environment has been generally said to describe 'all those elements which in their complex inter -relationship form the framework, setting and living conditions for mankind by their very existence or by virtue of their impact.'[7]'

The term 'Maritime' has been defined as belonging or relating to the sea.[8] The word 'Maritime' is a synonym of the word 'Marine.'[9] There are scarcely any domestic and international statutes that define the maritime environment. However, several environmental law jurists define the Maritime Environment.

[5]Cap E12, Laws of the Federation of Nigeria 2004.
[6] Section 63.
[7] 'European Commission' (Communication Number EEC OJ C 115, May 1976)2
[8] G Davidson, M Robinson, *Chambers 21st Century Dictionary* (Chambers Harrap Publishing Ltd 1999) 839.
[9] Ibid.

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For instance, Alashri defines the Maritime Environment as: "the saline water bodies which are naturally connected to each other, including their bottoms and soils with their contents of animals, plants, and natural resources forming in total the elements of marine life, as an ecosystem."[10] Although the domestic and international statutes do not define the term Maritime environment, we can infer what constitutes the maritime environment from their provisions. For instance, the National Environmental (Coastal and Marine Area Protection) Regulations of Nigeria[11] provides in its section 2 that its objective is to preserve the marine areas which include coastal areas, estuarine system, beaches, sea and other water bodies. Similarly, although the United Nations Conventions on the Law of the Sea[12] does not specifically define what the Maritime Environment is, article 1 provides that pollution of the Marine environment means dumping of waste into the seas and the Estuaries. It must be emphasized that both the National Environmental Coastal and Marine Area Protection) Regulations and the United Nations Convention on the Law of the Seas do not include artificially created water bodies as part of the maritime or marine environment. However, international scholars have argued that artificially created water bodies including the Suez Canal should be included in the definition of the maritime environment.[13] It may therefore be safe to conclude that the Maritime environment refers to the system of water bodies that connect naturally to each other and the surrounding lands to which they are connected.

3.0. POLLUTION OF THE MARITIME ENVIRONMENT: THE NIGERIAN EXPERIENCE

The Nigerian maritime environment has been adversely affected by decades of oil exploration and production in the Niger Delta. The maritime environment is a very delicate environment that is capable of being permanently destroyed by the adverse impact of pollution.[14]

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[10] A. E. M. Alashri, *Study on International Law Protection of the Gulf during Armed Dispute* (Pace University 2016) 55

[11] S. I. Number 18, 13th May 2011

[12] Adopted in 1982 and came into force in 1994.

[13] S. Hashim, 'Civil Liabilities for Jeopardizing the Marine Environment'cited in Y. H. Almutairi 'Protection of the Marine Environment under International Law and Kuwaiti Criminal Law'<https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1017&context>Accessed 1 June 2018.

[14] D J Hamblin, *Poison in the Well: Radio Active Waste in the Oceans at the Dawn of the Nuclear Age* (Rutgers University Press 2008) 27

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3.1. Oil Pollution in the Maritime Environment in Nigeria

In Nigeria, oil exploration primarily takes place in the Niger Delta region. The Niger Delta is the lowland, south of Nigeria.[15] The 2006 census places the population of the region as 30 million people.[16] The significance of the Niger Delta region to the Nigerian economy lies in the fact that Nigeria had an estimated 37 billion barrels of proved oil reserves in 2018[17] the majority of which are deposit in the Delta region and offshore in the blight of Benin, the Gulf of Guinea and the blight of Bonny.[18] Crude oil exports from the Niger Delta region has since the 1970s accounted for the bulk of the Nigerian Federal Government's revenues.[19] Oil exploitation in the Niger Delta region has brought economic prosperity. Unfortunately, it has alsoresulted in environmental hazards particularly to the maritime environment. The maritime environment of the Niger Delta is unfortunately one of the most polluted regions in the world as stated in these 2 reports. The first is a 2006 joint study of the Niger Delta region undertaken by the Nigerian Conservation Foundation, the World-Wide Fund for Nature and the International Union for Conservation of Nature. This studyreports that:

> 'An estimated 9 million – 13 million barrels (1.5 million tons) of oil has spilled in the Niger Delta ecosystem over the past 50 years, representing about 50 times the estimated volume spilled in the Exxon Valdez Oil Spill in Alaska in

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[15] K S Ebeku, *Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues,* (Oil and Gas Energy Law Intelligence Publication, 2005) 25.
[16] 'Report of the Technical Committee on the Niger Delta' (Government of Nigeria publication 2008) 102.
[17] 'World Wide Look at Oil Reserves' Oil and Gas Journal (June 6 2014) <http://www.ogj.com/articles/print/volume-112/issue-1/drilling-production/worldwide-look-at-reserves-and-production.html> Accessed 29 November 2021.
[18] 'Nigeria' United States Energy Information Administration (May 6 2016) <https://www.eia.gov/beta/international/analysis.cfm?iso=NGA> Accessed 9 January 2022.
[19] From 1975 to 2010 oil accounted for between 70% and 80% of the total government revenue revenue of Nigeria. C I Obi, 'Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria's Oil Rich Niger Delta' Canadian Journal of Developmental Studies (2010) 30 219 at 223. In 2014, crude oil accounted for 95% of Nigeria's total export and 58% of total government revenue. 'Nigeria' United States Energy Information Administration (May 6 2016) <https://www.eia.gov/beta/international/analysis.cfm?iso=NGA> Accessed 9 January 2022.

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> 1989. This amount is equivalent to about one 'Exxon Valdez' spill in the Niger Delta each year.'[20]

The second is a report by the United Nations (UN) that estimates that about "6,817 spills were recorded by the Nigerian Department of Petroleum Resources (DPR)[21]between 1976 and 2001 with a loss of approximately 3 million barrels of oil."[22] This report could be described as a highly understated report because the DPR (which wasthe main industry regulator) is widely perceived to be inept and inefficient and in its supervision of the Nigerian oil industry.[23]Two notorious oil spills that have adversely impacted the maritime environment in the Niger Delta region are worth being specifically mentioned. The blow-out of the Funiwa-5 oil well of Texaco Ltd of 1980 which resulted in well over 400,000 barrels or 16,800,000 gallons of crude oil being spilled into the maritime environment of Nigeria.[24] The spill commenced in January 17 1980 and continued until the 30th of January 1980 when the well caught fire.[25] This spill is said to have killed 836 acres of the swamp mangrove trees and to have killed most of the crabs and molluscs in the surrounding rivers and swamps.[26]The second is the Mobil Qua-Iboe oil spillage of 1998 in which 40,000 barrels or 1,680,000 gallons of crude oil

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[20] 'Niger Delta Natural Resources Damage Assessment and Restoration Project, Phase I Scoping Report, May 2006' Nigerian Conservation Foundation, WWF UK & International Union for Conservation of Nature. <http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CC0QFjAA&url=http%3A%2F%2Fcmsdata.iucn.org%2Fdownloads%2Fniger_delta_natural_resource_damage_assessment_and_restoration_project_recommendation.doc&ei=mdZSUrDpDMyV0QXKpIDgDw&usg=AFQjCNGAsqQCmU5qiwXPbLlgYnfrBzd2HQ> (Accessed 7 January 2022).

[21]Now replaced with the new regulatory body called the Nigerian Midstream and Downstream Petroleum Regulatory Authority under section 29 of the Petroleum Industry Act 2021

[22]*Niger Delta Human Development Report* (United Nations Development Program Publication, 2006) 76.

[23] The DPR has been criticized as comprising of staff who lack technical experts and for not having the economic and material resources to monitor the oil industry in Nigeria. DPR personnel often relied on multinational oil companies for logistic support in planning visits to pollution sites. *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta* (Amnesty International Publications, 2009) 12.

[24] S O Aghalino, B Eyinla, 'Oil Pollution and Marine Environment: Evidence form the Niger Delta, Nigeria' J Hum Ecol (2009) 28(3) 177

[25] Ibid 178

[26] J F Fekumo, 'Civil Liability for Damage Caused by Pollution in J A Omotola (ed) *Environmental Laws in Nigeria including Compensation* (University of Lagos Press 1990) 268.

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were spilled into the maritime environment.[27]The immediate impact of the oil spill was that test showed that 96.5% of mangrove seedlings died within 14 days of exposure to the oil film from the spill.[28]The death of the mangrove is tragic because mangrove provide breeding grounds for maritime creatures such as shellfish, fishes, molluscs among others.[29]

3.2. Evolution of Environmental Regulation in Nigeria

As noted above, the DPR was the primary regulatory agency for the oil industry until the year 2021 when the Petroleum Industry Act 2021 replaced it with the Nigerian Midstream and Downstream Petroleum Regulatory Authority.[30]The DPR was first created as a section of the Ministry of Lagos Affairs in the 1950s and was the first agency in Nigeria created by law to oversee the affairs of the oil industry.[31] It was subsequently moved under the Mines and Power Ministry and was renamed the Petroleum Division, before being subsequently relabeled as the DPR in 1970.[32] In 1975, the DPR was turned into the Ministry of Petroleum Resources and two years later, the Nigerian National Oil Corporation was amalgamated with the Ministry of Petroleum Resources to form what is now known as the Nigerian National Petroleum Corporation (NNPC).[33] There was however created by the same statute, the Petroleum Inspectorate, which was charged with the regulation of the petroleum industry. When created, the Petroleum Inspectorate was a part of the NNPC. However, its powers and duties were distinct from those of the NNPC as it was granted a semi-autonomous status and was prohibited from taking part in the commercial decisions and transactions of the NNPC. 1985 saw the creation of a new Ministry of Petroleum Resources, which in 1988 was merged with the Petroleum Inspectorate to form what became known as the DPR which is charged with the regulation and supervision of the Nigerian petroleum industry.[34]

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[27] Aghalino (n 24)
[28] Ibid 180
[29] Ibid
[30] See section 29 of the Petroleum Industry Act 2021.
[31] 'Department of Petroleum Resources, About DPR: Historical Background' <http://www.dprnigeria.com/aboutus.html> Accessed 1 April 2022.
[32] Ibid
[33] By virtue of Decree 33 of 1977.
[34] 'Department of Petroleum Resources, About DPR: Historical Background' <http://www.dprnigeria.com/aboutus.html> Accessed 1 April 2022.

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Before 1988, there were no detailed environmental laws in Nigeria. This caused the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN),to be drafted in the year 1981 and issueddirectly to the multinational oil companies (MNOCs) in form of administrative circulars by the then Petroleum Inspectorate.[35]At that time, they were the first set of environmental guidelines for the oil industry and they were issued as interim environmental guidelines.[36]In 1992, the DPR updated the EGASPIN and issued it to the MNOCs.[37] Though the original plan was for the EGASPIN to be reviewed after every 5 years as new knowledge became available, significant changes in the standards in the guidelines on effluent limitations and other issues were communicated to MNOCs via administrative circulars in-between the reviews.[38] The review of the 1992 EGASPIN began, in earnest, in 1996 through 1998 when the draft- revised version was issued to the MNOCs operating in Nigeria.[39] The issued draft formed the yardstick for oil operations of the MNOCs and as a working document between DPR and Operators until a final document was issued in 2002.[40]In practice, the EGASPIN has not been effectively enforced by the DPR and has therefore been ineffective in addressing the environmental challenges in the Niger Delta. The EGASPIN was perceived as a mere administrative policy which did not carry the weight and force of law. This challenge was compounded by the fact that the DPR was saddled with the regulation of all aspects of the protection of the environment ranging from air pollution to gas flaring to oil spills among others.

The Federal Environmental Protection Agency Act (FEPA Act) was promulgated in 1988 as the first comprehensive specific law on the protection of the environment. The Act was passed in response to the 1988 Koko toxic waste dumping incident. The Koko toxic waste dumping incident refers to the dumping of an estimated 3900 tons of toxic chemical waste by the Italian company

[35] 'The Development of Petroleum Guidelines and Standards for the Petroleum Industry in Nigeria: A Systematic Approach and Future Challenges' https://www.onepetro.org/conference-paper/SPE-86640-MS Accessed 1 April 2022
[36] Ibid
[37] Ibid
[38] Ibid
[39] Ibid
[40] Ibid

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Gianfranco Reaffeli in Koko town, in southern Nigeria.[41] Accordingly, it was aptly observed at the time that:

> "The Koko dump has brought in its wake a renowned national consciousness in the area of environmental protection. Hitherto our attitudinal approach to environment issues has more often than not been non-methodical and certainly lacking in vitality and purpose."[42]

However, the FEPA Act also established the Federal Environmental Protection Agency (FEPA). FEPA in pursuance to the wide-ranging powers granted under the enabling Act,[43] developed various regulations and guidelines, some of which are applicable to the oil sector.[44] The enforcement of these regulations against the oil industry inevitably led to conflicts with the DPR. This conflict made FEPA ineffective in addressing the crisis in the Niger Delta. This problem was resolved by the promulgation of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act,[45] which repealed and replaced the FEPA Act.[46]This eliminated the hitherto inter-agency conflicts that existed between the DPR and the FEPA. The NESREA Act sought to eliminate this conflict by expressly excluding the oil and gas sector within its sphere of influence thereby leaving the environmental regulation of the oil industry within the 'exclusive' jurisdiction of DPR. There was a lacunae as a result of the fact that the DPR's mandate did not extend to the detection and remediation of oil

[41] The FEPA Act was swiftly followed by the Harmful Waste (Special Criminal Provisions, etc.) Act Chapter 165, Volume IX, Laws of the Federation of Nigeria 1990.
[42]Bola Ajibola was the former Attorney-General of the Federation. B. Ajibola, The *Protection of the Nigerian Environment Through Law, in The Law and Environment in Nigeria,* (University of Ibadan Press, 1999) 80.
[43] Section 4(f)-(g) & 15-17 of the FEPA Act.
[44] The regulations relevant to the oil industry include the National Environmental Protection (Effluent Limitation) Regulations 1991, the National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations 1991, the National Guidelines and Standards for Industrial Effluents, Gaseous Emissions and Hazardous Waste Management in Nigeria 1991, the National Environmental Protection Management of Solid and Hazardous Wastes Regulation 1991, Sectoral Guidelines For Environmental Impact Assessment (Decree 86, 1992), National Guidelines and Standards for Water Quality in Nigeria 1999, National Guidelines on Environmental Management Systems in Nigeria 1999 and The National Guidelines for Environmental Audit 1999
[45] No 25 of 2007
[46]Cap F10 Laws of the Federation of Nigeria 2004

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spills. This lacunae was addressed in the year 2006, by the establishment of the National Oil Spills Detection and Remediation Agency (NOSDRA) by the National Oil Spills Detection and Remediation Agency Act 2006 (NOSDRA Act). The NOSDRA Act expressly provides that the agency shall be 'responsible for surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector.'[47] Despite this, the DPR still claimed and exercised jurisdiction over the enforcement of all environmental regulations with the oil sector including those relating to oil spills. This resulted in confusion and inter-agency conflict, which impedes effective action.[48] In the year 2021, the Petroleum Industry Act replaced the DPR with the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).[49] It is still too early to determine if the establishment of the NMDPRA has resolved the problems of conflict of laws that dodged the erstwhile DPR.

3.3. Challenges to Environmental Regulation in Nigeria

It has been suggested that several factors such as corruption, inadequate understanding of the technical aspects of the oil industry, the inability of the DPR to enforce international best practices of the oil and gas industry, the lack of political will on the part of the Nigerian government toeffectively enforce Nigeria's environmental regulations and Nigeria's heavy reliance on crude oil sales may have been responsible for the massive volume of oil spills in the Niger Delta region.[50]In addition, there is the fact that although the Nigerian government is supposed to regulate and supervise the industry, it directly participates in the exploration and production of crude oil in Nigeria through joint ventures with multinational oil companies (MNOCs).[51] The Nigerian Constitution vest ownership of oil and gas resources in the Federal Government of

[47] NOSDRA Act, s 6(1)(a).

[48] For example, UNEP in its 2011 Ogoni Report (p. 12) alluded to how this sort of problem (particularly between NOSDRA and DPR) has partly compromised effective oil spill clean-up and management in Ogoniland.

[49] See section 29 of the Petroleum Industry Act 2021.

[50] NE Ojukwu-Ogba 'Legal and Regulatory Instrument on Environmental Pollution in Nigeria: much talk, less teeth' International Energy Law and Taxation Review(2006) 8(9) 208 at 215; C Ochieze, 'Corporate Complicity in the Extractive Industry: Where does Legal Liability Stand?' Oil Gas Energy Law Intelligence (2007) 5(2) 1 at 5.

[51] P S Tamuno, 'The Tort of Negligence and Environmental Justice in the Niger Delta' OGEL (2017) (1) 1 at 3.

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Nigeria.[52]Similarly, past and current Petroleum legislation have vested ownership of Oil and Gas in the Federal Government of Nigeria.[53]On the basis of these legislation, the Nigerian government through the Nigerian National Petroleum Corporation entered into Joint Ventures agreements (JVs) with MNOCs (such as Shell, Agip, among others) for the exploration and production of crude oil. By these JVs the government obtained 55% share in the concession held by the MNOCs.[54] The implication of these JVs is that the blame for the pollution of the Nigerian maritime environment does not rest solely on the MNOCs. The Nigerian

[52] From Nigeria's independence on the 1st of October 1960, various constitution and statutes have vested ownership of oil and gas in the federal government of Nigeria. The 1960 Independence Constitution of Nigeria placed oil within the exclusive competence of the Federal Government by making oil and gas part of the Exclusive Legislative List. (Item 25, Part 1 of the Schedule of the 1960 Constitution of Nigeria.). The 1963 Constitution which replaced the 1960 Constitution took it a step further. First it placed oil under the exclusive legislative competence of the federal government by making oil part of the Exclusive Legislative List (Item 25 Part 1, the Schedule of the 1963; Section 69(2) of the 1963 Constitution gave the federal government exclusive power over matters in the exclusive list.). In addition, it vested all the property held by the British crown in the Federal government of Nigeria (section 158(1) of the 1963 Constitution). This section indirectly transferred ownership of mineral resources, earlier vested in the Crown by the Mineral Ordinance, to the Federal government. The 1979 Constitution which replaced the 1963 Constitution first awarded exclusive competence to the federal government to make law on oil and gas (Item 36 part 1, Second Schedule of the 1979 Constitution and section 4(2) of the 1979 Constitution gives the federal government exclusive power for this schedule). Secondly the 1979 Constitution categorically awarded ownership of all mineral resources to the federal government in the following words: 'The entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly,' (section 40(3) of the constitution). This provision is repeated verbatim section 44(3) of the current 1999 Constitution which in addition also makes oil exploitation a matter for the exclusive legislative competence of the federal government (Second Schedule, Part I, item 39 of the 1999 Constitution; section 4(2) also gives the federal government exclusive competence for this schedule).

[53]For instance, section 1 of the Petroleum Act 1969 provides that 'the entire control and ownership of all petroleum in, under or upon any lands to which this section applies shall be vested in the State.' The Petroleum Act is replaced by the Petroleum Industry Act enacted in 2021 which in its section 1 vests ownership of Petroleum within Nigeria, its territorial waters, CContinental Shelf and Exclusive Economic Zone in the Federal Government of Nigeria.

[54] Y Omorogbe *Oil and Gas Law in Nigeria* (Malthouse Press Ltd 2003) 47

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government is to the extent of its JV participation, responsible for the pollution of the maritime environment in the Niger Delta.[55]

3.4. The Effect of Environmental Pollution on the Maritime Environment

In describing the effect of oil and gas exploration and production on the maritime environment in the Niger Delta, this article would rely on a report from the United NationsEnvironment Programme (UNEP). This report was the outcome of a study that involved the examination of the soil and groundwater condition of 69 sites in *Ogoni*.[56] In addition, 4,000 samples of community drinking water, sediments from creeks, surface water, rainwater, fish and air were collected throughout *Ogoni* and in several neighbouring areas from 142 groundwater monitoring wells drilled specifically for the study.[57] Although, this report is based on studies only in the Ogoni region of the Niger Delta, Nigeria, it is a mirror image of the entire Niger Delta. The Report of this study published in 2011 noted *inter alia* that:

- Crude oil has extensively contaminated the soil and ground water of the *Ogoni* territory and the soil contamination exceeds the standard set in the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria and resulting in considerably poor yields from agricultural undertakings.[58]
- Clean ups after spills were not really successful; and in one case the community's soil was still heavily contaminated 40 years after the spill despite repeated clean ups.[59]
- Crude oil had also contaminated the drinking water in *Ogoni*. This contamination in some cases gave rise to water with oil related contaminant limits that were 1,000 times higher than the Nigerian standard drinking water.[60] A particular community[61] got its drinking water

[55] T Oyewunmi, 'Natural Gas Exploration and Production in Nigeria and Mozambique: Legal and Contractual Issues' (2015) OGEL 13 (1) at 1, 10 and 14; A Akinrele, 'The Current Impact of Global Crude Oil Prices on Nigeria: an Overview of the Nigerian Petroleum and Energy Sector.' J World Energy Law Bus (2016) 9 (5) 313 at 329.
[56]*Environmental Assessment of Ogoni Land* (United Nations Environmental Programme Publications 2011) 9.
[57] Ibid.
[58] Ibid 10.
[59] Ibid 9.
[60] Ibid 11.

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from wells which contained Benzene (also known as Carcinogen[62]) at levels that were over 900 times the World Health Organization guidelines.[63]

- Oil pollution had significantly impacted fishing as the mangrove forest which was the spawning areas of fishes was being destroyed.[64] Furthermore, surface waters in creeks were often covered with floating layers of oil of varying thickness rendering them useless for fishing as fishes moved away from these contaminated water bodies.[65]

The report concludes that these levels of pollution were the result in most cases of inadequate regulation of the environment and non-compliance with existing environmental regulation as a result of poor enforcement of these regulations by the regulatory agencies. MNOCs particularly Shell were criticized for not applying the industry best practices in their operations.[66]

After this report, NOSDRA has fined several companies for oil spills that are not effectively cleaned up. These fines are issued pursuant to the Oil Spill Recovery, Clean Up, Remediation and Damage Assessment Regulations 2011. The manner in whichNOSRA hasexercised the power to award fines has generated controversy. For instance, in the year 2012, there was an oil spill of 200 barrels of crude oil from the Mobil Qua Iboe Terminal.[67]In the year 2015 Mobil Producing Nigeria Unlimited was fined the paltry sum of Ten Million Naira by NOSDRA for its failure to clean up this oil spill.[68]However, Shell was fined$US 3.6 billion by NOSRA in the year 2015for the 2011 Bonga oil field leak off the coast of the

[61] Ogale Community.
[62] Cancer causing substance.
[63]Environmental Assessment of Ogoni Land (n 56) 11.
[64] Ibid 10.
[65] Ibid.
[66] Ibid 12.
[67] 'Oil spill agency reports fresh incident from Exxon Mobil facility in A'Ibom' <https://www.premiumtimesng.com/regional/181879-oil-spill-agency-reports-fresh-incident-from-exxonmobil-facility-in-aibom.html>Accessed 10 June 2022; 'Mobil Still Yet to Clean- Up after Akwa Ibom Oil Spill' <https://www.premiumtimesng.com/news/115119-mobil-still-yet-to-clean-up-after-akwa-ibom-oil-spill.html>Accessed 1 June 2022.
[68] O. J. Olujobi, O. A. Onyewunmi, A. E. Onyewunmi, 'Oil Spillage in Nigeria's Upstream Sector: Beyond the Legal Frameworks' International Journal of Energy Economics and Policy(2018) (8)(1) 220 at 222

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Niger Delta which spilled 40,000 barrels of crude oil into the maritime environment.[69]No explanation was given as to how the fine of$US 3.6 billion was arrived at. NOSDRA simply noted that $US 1.8 billion was for damage done to natural resources and consequential loss of income by affected shoreline communities and the remaining 1.8 billion was for punitive damages.[70]Shell responded by challenging the fine in court.[71] The Federal High Court sitting in Lagos upheld the fine of$US 3.6 billion in the year 2018.[72] The fine is yet to be paid and NOSDRA has not taken any step to enforce the payment of the fine.

4.0. POLLUTION OF THE MARITIME ENVIRONMENT: THE EXPERIENCE OF THE UNITED KINGDOM

Pollution has adversely affected the maritime environment in the United Kingdom. It is not the aim of this article to provide a detailed analysis of the environmental laws and agencies of the United Kingdom. This article would only examine how the United Kingdom responded to environmental pollution. Pollution of the maritime environment has come from both the transportation of oil and gas and the process of oil production.

As regards the transportation of crude oil, the United Kingdom in the 1960s experiencedthe notorious Torrey Canyon incident. This incident involved a super tanker *SS Torrey Canyon*, (registered in Liberia) which was transporting 25 to 36 million gallons of crude oil from Kuwait to Wales (United Kingdom) in the year 1967.[73]Following a navigational error, the ship became grounded and subsequently broke up spilling huge volumes of crude oil.[74]An estimated 100, 000 tons of oil was spilled to about 120 miles of the Cornish coast of the United Kingdom.[75] The spill resulted in the death of a huge number of sea birds and

[69] 'Shell says judgment on $3.6b Bonga oil spill fine not binding' <https://worldstagenews.com/shell-says-judgment-on-3-6b-bonga-oil-spill-fine-not-binding/> Accessed 1 June 2022
[70] 'Fisherman wants Shell to pay 3.6b Bonga Spillage fine'<https://firstnewsonline.ng/fishermen-want-shell-to-pay-3-6b-bonga-spillage-fine>Accessed 1 June 2022.
[71] Ibid
[72] Ibid
[73]G W Keeton, 'Lessons from the Torrey Canyon' Current Legal Problems(1968) 21 94 at 111
[74] Ibid
[75] Aghalino (n 24)

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marine organisms.[76]The spill would have had a greater impact if the British government had not responded promptly by sending the Royal Air force to bomb the Torrey Canyon as a means of curtailing further pollution of the maritime environment.[77]The British government reformed its oil pollution laws in the year 1971. The Prevention of Oil Pollution Act of 1971 was passed in 1971. This Act increased the penalty for oil spills from 1000 British Pounds to 50,000 British Pounds.[78]

As regards pollution by oil exploration and production, the bulk of oil exploration and production takes place in the United Kingdom Continental Shelf in the North Sea.[79] Most of the oil pollution are leaks from oil platforms, rigs, pipelines and other facilities. These spills have been of small volume in comparison to the oil spills of the Niger Delta. Since the year 2000, a series of oil spills into the North Sea have been recorded. On the 22nd of October 2000, Kerr Mc Gee North Sea UK Ltd spilled 400 tonnes or 127,103 gallons of crude oil into the sea from the subsea pipeline; it was fined 10,000 British Pounds by the UK regulatory agencies.[80]On the 2nd of December 2002, BP Exploration Operating Company accidentally discharged 28 tonnesof diesel into the North Sea from its Forties Alpha Platform; it was fined 20,000 British Pounds.[81] On the 17th of June 2003, Total E&P UK PLC discharged 6 tonnes of diesel into the North Sea; it was fined 20,000 British Pounds.[82] On the 12th of May 2003, Shell UK Ltd discharged 7.5 tonnes of diesel into the North Sea; it was fined 7000 British Pounds.[83] On the 1st of July 2004, Amoco (UK) Exploration Company Ltd discharged 31 tonnes of

[76]'Oil Spill: Legacy of the Torrey Canyon' <https://www.theguardian.com/environment/2010/jun/24/torrey-canyon-oil-spill-deepwater-bp> Accessed 11 January 2022
[77] Ibid.
[78] See section 2 of the Prevention of Oil Pollution Act of 1971 of the United Kingdom; Aghalino (n 24) 180.
[79] The North Sea is the Marginal Sea between the United Kingdom and the Scandinavia.
[80]'Oil Companies Going Unpunished for Thousands of North Sea Oil Spills' The Guardian, International Edition, (Thursday October 25 2012) <https://www.theguardian.com/environment/2012/oct/25/oil-companies-north-sea-spills> Accessed 9 January 2022.
[81] Ibid
[82] Ibid
[83] Ibid

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diesel into the North Sea;It was fined 12,000 pounds.[84] In August 2011, Shell UK Ltd discharged 200 tonnes or 63,551 gallon of crude oil into the North Sea it was fined 22,500 British Pounds.[85]These spills have adversely affected the marine life in the North Sea because the fauna in the sea include fragile organisms such as clams, mussels, sea anemones, crabs, tube worms, shrimps, fishes and bacteria which as a result of the spills face increased threat of extinction due to the devastation of their habitat.[86]The fines issued for the spills have been criticized as paltry.[87]There are also allegations that there are several other oil spills into the North Sea that have gone unpunished because they were undetected by the regulatory agencies of the United Kingdom.[88]

5.0. POLLUTION OF THE MARITIME ENVIRONMENT: THE EXPERIENCE OF THE UNITED STATES

The United States has also had its experience of oil spills into the maritime environment. Like the United Kingdom these spills have been both as result of the oil exploration and production process as well as the oil transportation process. Again, this article would not be critically examining the environmental laws and the regulatory agencies in the United States.

There have been three notorious oil spills that adversely affected the maritime environment in the United States.The first of these was the Ixtoc 1 Oil Spill of 1979. This spill was as a result of the process of oil exploitation and production. This incident occurred when a Mexican Oil company known as PEMEX was drilling crude oil in the Gulf of Mexico. On June 3 1979 due to extreme high pressure there was an explosion of the oil rig.[89] It was estimated that 71,500 barrels or 3 million gallons of crude oil was spilled into the surrounding waters

[84] 'Shell's E22,500 for North Sea Oil Spill Slammed as Paltry by Campaigners' The Independent (Tuesday 24 November 2015) <http://www.independent.co.uk/environment/shells-22500-fine-for-north-sea-oil-spill-slammed-as-paltry-by-campaigners-a6747536.html> Accessed 9 January 2022.
[85] Ibid
[86] D Attard, M Fitzmaurice, N Martinez, R Hamza, *The IMLI Manual on International Maritime Law: Volume 3: Marine Environmental Law and Maritime Security Law* (Oxford University Press 2016) para 4.2.2
[87]'Shell's E22,500 for North Sea Oil Spill Slammed as Paltry by Campaigners' (n 94)
[88] 'Oil Companies Going Unpunished for Thousands of North Sea Oil Spills' (n 80)
[89] J Vinnem, *Lessons From Major Accidents* (Springer Link 2013) 95

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making it the largest oil spill at the time.[90] The spill is said to have affected 162 miles of United States beaches.[91] Owing to the fact that this spill occurred in a time when the harmful impacts of oil spills was not really the focus of the government of the United States, this spill was not effectively studied and the response was left to the oil company responsible for the spill. Nevertheless, Pemex spent US$100 million to clean up the spill and avoided most compensation claim by asserting immunity as a state run company.[92] But decades after the spill, studies have shown that the spill severely impacted the littoral and mollusc fauna of the beaches which were contaminated; the population of crab were almost totally eliminated over a wide area.[93] In addition, fishermen from the region noted that fish catches dropped to about 50% of the 1978 levels.[94] The spill is also said to have adversely affected the population of the endangered Kemp Ridley turtles.[95]

The second notorious oil spill into the maritime environment of the United States is the Exxon Valdez incident. This incident is similar to the Torrey Canyon incident in that it was as a result of the transport of crude oil. The *Exxon Valdez* was an oil tanker owned by Exxon Shipping Company. While transporting crude oil to Long Beach California, it crashed into Prince William Sound in Alaska on the 24th of March 1989 spilling over 257,150 barrels or 10.8 million gallons of crude oil into the surrounding waters.[96] The oil spill affected 1,100 miles of coastline of Alaska.[97] In contrast to the Ixtoc 1 oil spill, this spill was effectively studied and adequately responded to. Due to the massiveness of the spill the

[90] A Jernelov, O Linden, 'Ixtoc 1: A Case Study of the World Largest Oil Spill' Ambio J (1981) 10(6) 299
[91] Vinnem (n 89)
[92] R Campbell, 'BP Gulf Battle Echoes Monster 79 Mexico Oil Spill'<https://www.reuters.com/article/us-oil-rig-mexico-sidebar/bps-gulf-battle-echoes-monster-79-mexico-oil-spill-idUSTRE64N57U20100524?loomia_ow=t0:s0:a49:g43:r3:c0.059044:b34388744:z0> Accessed 10 January 2022.
[93] Jernelov (n 90)
[94] Ibid
[95] Ibid
[96] E R Millard, 'Anatomy of an Oil Spill: The Exxon Valdez and the Oil Pollution Act of 1990'Seton Hall Legis. J. (1993-1994) (18) 331
[97] 'Oil Spill Case Histories: 1967 – 1991 Summaries of Significant US and International Spills' <https://www.gpo.gov/fdsys/pkg/CZIC-td427-p4-o4-1992/content-detail.html> Accessed 10 January 2022.

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United States government's response was also very enormous and prompt. The United States government employed 11,000 personnel, 1,400 vessels and 85 aircrafts to clean up the spills.[98] The clean-up exercise lasted for 2 years and 6 months.[99] Nevertheless, the impact of the spill was massive. The spill is said to have caused the death of more than 100, 000 sea birds, over 2,800 sea otters, approximately 12 river otters, 300 harbour otters, 247 bald eagles and 22 orcas and an unknown number of salmon, herring, molluscs, etc.[100]

The United States government responded further to the Exxon Valdez Spill by enacting the Oil Pollution Act of 1990.[101] This Act made detailed provisions on the structures that vessels that convey crude oil must possess.
The third notorious oil spill, is the Deepwater Horizon Spill that occurred in the year 2010. This spill occurred at a platform of the Macondo Prospect run by the British Petroleum Company in the Gulf of Mexico. The wellhead blew out on the 20th of April 2010 while the workers were drilling for oil at depths of above 5,000 feet killing 11 people.[102] For 3 months British Petroleum workers attempted to cap the well head but the efforts were futile. The wellhead was eventually temporarily plugged on the 15th of July 2010.[103]By this time, and estimated 4.9 million barrels or 205.8 million gallons of crude oil had been spilled into the surrounding seas making it one of the worst oil spills in the world.[104]The well was declared permanently sealed on the 19th of September 2010.[105]As was the case of the Exxon Valdez incident, the government of the United States mobilised a massive response to protect the United States beaches, estuaries and wetlands utilizing dozens of ships and other vessels and a huge volume of oil dispersant

[98] Ibid
[99] Ibid
[100] 'Exxon Valdez Ten Years On' BBC News (Thursday March 18 1999) <http://news.bbc.co.uk/2/hi/americas/298608.stm> Accessed 10 January 2018.
[101]E R Millard, 'Anatomy of an Oil Spill: The Exxon Valdez and the Oil Pollution Act of 1990'Seton Hall Legis. J.(1993-1994) (18) 331 at 332.
[102] J D Rivera, D S Miller, C Gonzalez, 'The BP Oil Spill and the Adherence to Reductionist Principles: Moving Towards a Precautionary Tomorrow' Journal of Emergency Management(2012) 8 (4) 4
[103] 'Gulf Oil Spill' <http://ocean.si.edu/gulf-oil-spill> Accessed 10 January 2022
[104] 'New Estimates puts the Gulf Oil Leak at 205 million gallons' <https://www.pbs.org/newshour/science/new-estimate-puts-oil-leak-at-49-million-barrels> Accessed 10 January 2022.
[105] Rivera (n 102)

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and thousands of clean up personnel.[106]Nevertheless extensive damage to maritime habitat was reported. There were reports that dolphins and other marine animals such as Tuna died at a record rate.[107]A study showed that 20% to 50% of the fishes that were caught by fishermen in the months following the spill had lesions.[108]

6.0. A COMPARATIVE ANALYSIS OF THE LEGAL RESPONSE TO OIL POLLUTION IN THE MARINE ENVIRONMENT IN NIGERIA, UNITED KINGDOM AND THE UNITED STATES

This article made several findings as to the distinguishing features of thelegal response to pollution in the maritime environment between Nigeria on the one hand, and the United Kingdom and the United States on the other hand. These findings include:

1. **Enactment of Focused Legislation:** Both the United States and the United Kingdom were quick to enact specific laws that addressed the lacunae in the system that resulted in the pollution. For instance the United Kingdom enacted the Prevention of Oil Pollution Act of 1971 in response to the Torrey Canyon incident. This Act was enacted specifically to increase the fine for oil pollution. Similarly, the United States enacted the Oil Pollution Act of 1990 as a response to the Exxon Valdez spill. This Act was enacted specifically to define the structure that a vessel carrying crude oil must possess. In Nigeria, statutes are enacted not to address specific lacunae but to attempt to cover the entire subject matter of environmental pollution as in the case of FEPA Act or the subject of oil spill as in the case of NOSDRA.
2. **Treatment as National Emergencies:**In the United Kingdom and the United States, massive oil spills are treated as national emergencies and responded to accordingly.For instance,in the United Kingdom,the Royal Air forcewas deployed to curb the Torrey Canyon incident. The United States government employed 11,000 personnel, 1,400 vessels and 85 aircrafts to clean up the Exxon Valdez spill. In Nigeria, oil spills are not

[106] 'Gulf Oil Spill' http://ocean.si.edu/gulf-oil-spillAccessed 10 January 2022.
[107] B David, 'The BP Spill's Growing Toll on the Sea Life of the Gulf' Yale Environment Journal (2010) 360; 'Gulf Oil Spill' <http://ocean.si.edu/gulf-oil-spill>Accessed 10 January 2022.
[108] Ibid

https://doi.org/10.53982/alj.2021.0901.05-j

treated as national emergencies. In most cases the clean up process is perceivedas the sole responsibility of the MNOC.

3. **Investment of Huge Funds in Clean Ups:** In the United Kingdom and the United States, huge funds are invested into the clean up process.Millions of dollars are invested in restoring the environment. For instance, Exxon spent $US2 Billion to clean-up the Exxon Valdez spill.[109]In Nigeria, huge funds are not invested in restoring the environment. Clean-ups after spills are in many cases superfluous. The UNEP report observed that clean ups after spills were not really successful; and in one case the community's soil was still heavily contaminated 40 years after the spill despite repeated clean ups.[110]
4. **Judicious Use of Fines:** In the United States and the United Kingdom fines are awarded in a measured and objective manner. Fines match the extent of environmental damage. For instance, in the Exxon Valdez oil spill, Exxon was fined US$507 million in spite of the fact that Exxon for spilling 257,150 barrels of crude oil into the maritime environment.[111] In the Deepwater Horizon spill, BP was asked to pay US$4.5 Billion in fines and other payments for spilling 4.9 million barrels of crude oil into the maritime environment.[112]In Nigeria, NOSDRA seems to award fines in an arbitrary manner. This is illustrated by the huge fine of US$3.6 Billion awarded against Shell in the Bonga oil spill incident in which 40,000 barrels of crude oil were spilled into the maritime environment.[113]
5. **Purely Regulatory Role of the State:** In Nigeria, government response has been affected by the fact that the government are in joint ventures (JV)with MNOCs for the purpose of exploring and producing crude oil. According to Idemudia, the JV agreements have resulted in the fact that the Nigerian government and the MNOCs have both traditionally used each other's failure 'as a means of absolving itself of any wrong doing in

[109] Gale Cengage Learning, *Corporate Disaster: Health Safety and Environment in Peril* (Gale Cengage Learning Publication 2017)126
[110] Ibid 9.
[111] Gale Cengage Learning, *Corporate Disaster: Health Safety and Environment in Peril* (Gale Cengage Learning Publication 2017)126
[112] 'BP Ordered to Pay Extra U.S.$4.5 Biggest Criminal Fine in U.S. History' Financial Post<http://business.financialpost.com/uncategorized/bp-close-to-agreeing-record-oil-spill-fine-sources> Accessed 11 January 2022.
[113] 'Fisherman wants Shell to pay 3.6b Bonga Spillage fine'<https://firstnewsonline.ng/fishermen-want-shell-to-pay-3-6b-bonga-spillage-fine>Accessed 1 June 2022.

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the Niger Delta region.[114] For instance in 2008, Shell blamed the Nigerian government for failing to meet its own target to end gas flaring by 1st January 2008, by failing to provide its 55% share of the cost of gas utilization facilities under the terms of the Shell/Nigerian National Petroleum Corporation Joint Venture.[115] This blame trading also happens in the maritime environment. The government of the United Kingdom and the United States do not have this constraint.

6. **Harmony of Laws and Regulatory Agencies:**In Nigeria, the legal response to the pollution of the maritime environment has been hampered by conflict between the rolesof regulatory agencies such as the conflict between DPR and FEPA andthe conflict between DPR and NOSDRA**.** For instance, the UNEP Report noted that DPR and NOSDRA have differing interpretations of EGASPIN, leading to ineffective environmental remediation.[116]No such inter agency conflicts are experienced in the United Kingdom and the United States.

[114] U Idemudia 'Corporate Social Responsibility and the Rentier Nigerian State: Rethinking the Role of Government and the Possibility of Corporate Social Development in the Niger DeltaCanadian Journal of Development Studies,'(2010) 30 (1-2) 131 at 143.
[115]'Nigeria House of Representatives insist on 2008 Gas Flaring Deadline' http://www.gasandoil.com/news/africa/d34c23e836dc281f0eb0b10300bcb521 Accessed 9 January 2022.
[116] Environmental Assessment of Ogoni Land (n 56) 12.

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7.0. CONCLUSION AND RECOMMENDATIONS

This article examined the impact of oil pollution on the maritime environment in Nigeria, the United Kingdom and the United States.

The article examined major oil spills into the Nigerian maritime environment such as the Funiwa-5 oil well of Texaco Ltd of 1980 and the Mobil Qua-Iboe oil spillage of 1998. In the United Kingdom, this article examined oil spills like the Torrey Canyon incident and other spills. In the United States this article examined 3 major spills: the Ixtoc 1 of 1979, the Exxon Valdez of 1989 and the Deepwater Horizon of 2010. This article found that these oil spills were as a result of accidents and negligence during oil exploration, drilling, transportation, processing and storage.

This article found that initially Nigeria had very skeletal environmental regulations but that in the year 1981, the DPR came up with an environmental policy called the EGASPIN. This was followed by the enactment of the FEPA Act in the 1988. The FEPA Act did not only provide environmental laws it also established the FEPA.As a result of the fact that there were conflicts between the FEPA and the DPR over oil spills from the petroleum industry in Nigeria, the FEPA was replaced by the NESREA. Prior to the replacement of the NESREA, the NOSDRA was established to specifically address the response to oil spills. It was observed that in spite of these changes there were still conflicts between DPR and NOSDRA.In the year 2021, the DPR was replaced by theNMDPRA under the Petroleum Industry Act 2021.

The legal and regulatory responses to oil spills were more effective in the United Kingdom and the United States. This is attributable to the fact that in these states, oil spills were treated as national emergencies and huge funds and resources were invested in clean up exercises. In addition, laws were enacted in both the United Kingdom and the United States after the spills to target specific lacunae in their environmental regulations and fines were judiciously awarded in these jurisdictions. Furthermore, the state played a purely regulatory role in these states. In Nigeria, the legal response to oil pollution is hampered by the fact that the state played both a regulatory role and a participatory role in the petroleum industry. In addition, massive oil spills are not treated as national emergencies and adequate funds and resources are not invested in clean-up exercises. Finally,

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environmental laws are often unfocused and environmental agencies often have conflicting responsibilities.

This article therefore recommends that oil spills should be treated as national emergencies and specific funds be set aside for the clean-up of the maritime environment from the earnings from oil exports. In addition, an objective scale be set up for determining how companies are going to be fined for oil spills. Finally, the issue of conflicting responsibilities of regulatory agencies in Nigeria be should be addressed.