

**INTERNATIONAL ENVIRONMENTAL LAW IN NIGERIA: THE
PRECAUTIONARY, PREVENTIVE AND POLLUTER PAYS
PRINCIPLES, EMERGING TRENDS, CHALLENGES AND
PROSPECTS**

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Abstract

Relying on the doctrinal research methodology, this paper provided an overview of precautionary, preventive, and polluter pays principles of international environmental law with a view to understanding their applicability in matters of environmental concern and their presence within Nigeria's national and international legal and institutional framework. This paper revealed that these principles are embedded deeply within international and national environmental law and are universally recognised. It was, however, discovered that within Nigeria, the lack of widespread implementation and awareness of environmental laws hinders their applicability. Thus, it was recommended that investment in science and technology, national and international collaboration, increased awareness, enhanced commitment towards implementation of sound environmental laws, among others, will go a long way in promoting environmental protection not just in Nigeria, but globally towards sustainable development.

Keywords: Precautionary Principle, Preventive Principle, Polluter Pays Principle

1.0 INTRODUCTION

International environmental law is a subset of public international law that addresses global environmental issues. It encompasses regulations, beliefs, and practices that delineate our shared obligation to safeguard the environment. The environment is delicate; thus, it can only flourish through global dedication to its preservation. We demonstrate our dedication to the environment by acknowledging and implementing essential concepts that emphasise the necessity of environmental protection. This study collectively examines the Precautionary, preventive, and Polluter Pays Principles due to their interrelatedness. The precautionary principle involves implementing measures to mitigate or prevent environmental harm resulting from an action, or to guarantee that such harm does not occur through the adoption of these measures. The polluter pays principle mandates that the polluter compensates for the damage inflicted and undertakes measures for environmental repair. These principles are essential to our international environmental framework, directing our decision-making on environmental issues.

Within Nigeria, our national laws embody these principles, and our environmentally related institutions operate with these principles in mind. The environmental challenges faced and efforts towards tackling them in Nigeria and globally are indicative of our understanding and application of these principles. Thus, this paper provides an overview of the precautionary, preventive, and polluter pays principles of international environmental law applicable internationally in Nigeria with a view towards understanding their legal status and presence within our body of environmental laws and institutions, including our national and international judiciary. This paper also provides an insight into the emerging trends in the area of international environmental law that signal

further application of these principles, the roles of NGOs and the society in environmental matters, the challenges faced hindering the optimal application and enforcement of these principles and provides recommendations which if implemented can deepen the understanding and application of these principles towards a better environment for us all.

2.0 UNDERSTANDING THE PRECAUTIONARY AND POLLUTER PAYS PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW

a. The Precautionary Principle

A basic understanding of the precautionary principle is to the effect that precaution be taken to prevent environmental damage or health hazards. The precautionary principle is one of the essential principles of international environmental law, and its definition cuts across different circumstances. However, the principle primarily involves a common denominator, which entails taking precautionary measures to prevent harm to the environment when there is scientific uncertainty as to the nature or extent of harm.¹

The formulation of the principle is credited to German law, where it was introduced as the principle of foresight known as *Vorsorgeprinzip* in German during the drafting of air pollution legislation in the 1970s.² The principle entailed the need to take precautions to prevent pollution. Over the decades, the principle has developed to become part of international

¹ Didier Bourguignon, *The Precautionary Principle: Definitions, Applications and Governance* (European Parliamentary Research Service, 2015) 6.

² Majambere Rodrigue, 'The Precautionary principle in Environmental Law' [2023]11 *Open Journal of Social Sciences*, 551.

environmental law, recognised in various international conventions, treaties and soft law.³ The Precautionary Principle is laid down notably in the Rio Declaration⁴ and the UN Framework Convention on Climate Change as follows:

*“The Parties should take precautionary measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures...”*⁵

The presence of scientific uncertainty thus becomes indicative of the need for a precautionary approach or the application of the precautionary principle to decision-making in matters of environmental or health concern.⁶ So, while the public would ordinarily be required to prove that the activity is potentially harmful to the environment or human health, in this principle, the burden shifts. It now behoves the person or company proposing the risky activity to prove that it is safe even before the harm occurs.⁷

According to Stevens, the burden of scientific proof shifts from those who would want the activity to be prohibited to those who conduct the

³ Vienna Convention, 1985, Convention on Biodiversity, 1993, UNFCCC, 1982, Rio Declaration, 1992.

⁴ Principle 15, Rio Declaration, 1992.

⁵ Art 3, UNFCCC, 1992

⁶ Jacqueline Peel, ‘Precaution – A Matter of Principle, Approach or Process?’ [2004] 5 *Melbourne Journal of International Law*, 9.

⁷ Gonzalez M. J. Juan, Montelongo B. Ivett and Pacheco R. A. Maria, ‘The Precautionary Principle in Environmental Law’ [2025] 13 (1) *Environmental Analysis and Ecology Studies*, 1583.

activity to show that it is safe and that the profits outweigh the harm.⁸ But one cannot wait for when that science becomes certain before precautions to prevent harm can be taken. The principle hinges on three core elements, which are: the presence of threat or risk of serious damage, the need for environmental or human health protection and the fact that lack of scientific certainty should not be used to avoid taking measures to prevent the harm.⁹ While the principle is widely recognised in international law, its status as customary international law is not certain. Some States like the US¹⁰ (and even Principle 15 of the Rio Declaration) preferred to call it ‘Precautionary Approach’ or ‘Process’ instead of a principle, but regardless of whatever phraseology is used, the essence of precaution is to ensure measures are taken to prevent harm.

b. The Prevention of Environmental Harm Principle

Environmental protection entails the need to prevent harm to the environment. This is contained in national and international environmental laws. The prevention principle is another fundamental principle of international law that emphasises the need to prevent environmental harm before it occurs.¹¹ The principle places an obligation on States to exercise due care in avoiding or mitigating environmental harm either within their

⁸ Mary Stevens, ‘The Precautionary Principle in the International Arena’ (Sustainable Development Law and Policy: 2002) 13-15.

⁹ P. Sands and J. Peel, *Principles of International Environmental Law* (Cambridge University Press: 2012).

¹⁰ During negotiations for the Biosafety Protocol which led to it being preferred in the Protocol.

¹¹ Kudrat E. Khuda Babu, et al., ‘Principles of International Environmental Protection and Global Obligations’ [2023] 22 (3) *Nature Environment and Pollution Technology: An International Quarterly Scientific Journal* 1404.

boundaries or transboundary.¹² While in the precautionary principle, there is uncertainty as to risk and consequently, harm, in the prevention principle, there is certainty about the risks to the environment, that harm would occur, and so preventive steps, measures, or efforts are taken to stop the damage from occurring instead of waiting for the damage to occur, then repairing the damage. The principle finds its basis in the fact that it takes much more to repair the damage and restore the environment, and so preventing it is the best approach to take.¹³

The Earth is indeed fragile; the air, land, water, plants and animals face risk of harm if people do not take care to ensure their protection from harmful activities.¹⁴ There are numerous human activities today that are potentially harmful to the environment. In Nigeria, the exploration of oil and gas is one of the most significant human activities that impacts the environment. Knowing that these types of activities are harmful to the environment, the preventive principle should be applied in that measures should be put in place to prevent the harm from occurring. The multiplicity of potentially harmful activities globally justifies the need to embed the principle in our global environmental legal framework to ensure that the risks of environmental degradation are limited or eliminated.¹⁵

¹² Leslie-Anne Duvic-Paoli, 'Prevention in International Environmental law and the Anticipation of Risk(s): A Multifaceted Norm', in M. Ambrus, R. Rayfuse and W. Werner (eds), *Imagining the Future: Conceptions of Risk and the Regulation of Uncertainty in International Law* (Oxford University Press) 1.

¹³ Leslie-Anne Duvic-Paoli, *The Prevention Principle in International Environmental Law* (Cambridge University Press 2018) 1.

¹⁴ G. Haffer and I. Buffard, 'Obligation of Prevention and the Precautionary Principle' in J. Crawford, A. Pellet and S. (eds), *The Law of International Responsibility* (Oxford University Press 2010) 521-534.

¹⁵ Duvic-Paoli (n.12) 2.

The obligation of prevention, therefore, requires that States be proactive in ensuring the avoidance of environmental damage nationally or along transboundary lines.¹⁶ Since States have a duty to ensure that their activities do not cause harm to the territory of another State, they also have a duty to ensure that they prevent such transboundary harm from occurring. As outlined by the International Law Commission, “the State of origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimise the risk thereof.”¹⁷ This is culled from Principle 21 of the Stockholm Declaration, which declares that:

*“States have, in accordance with the Charter of the United Nations and the principles of international law, ... the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”*¹⁸

In the context of prevention of transboundary harm, the principle highlights the traditional legal maxim *sic utere tuo ut alienum non laedes*, which means ‘use your own property in such a manner as not to injure that of another’.¹⁹ The prevention principle is well recognised as customary international law and has been recognised in several cases. In the *Iron Rhine Railway Arbitration*, the Permanent Court of Arbitration held that it is an integral environmental principle that where development may cause significant environmental harm, there lies a duty to prevent, or at least

¹⁶ J. E. Hickey and V. R. Walker, ‘Refining the Precautionary Principle in International Environmental Law’ [1995] 14 (3) *Virginia Environmental Law Journal*, 423-454.

¹⁷ Article 3, ILA Draft Article on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, 2001.

¹⁸ Principle 21, Stockholm Declaration, 1972.

¹⁹ Duvic-Paoli (n.12) 7.

mitigate the harm.²⁰ The *Trail Smelter* Case, for example, famously upheld the principle of prevention, especially relative to transboundary harm.²¹ The utilisation of one's resources must be in such a manner that does not result in harm in another's territory. This is what the International Court of Justice recognised in the cases of *Legality of the Threat or Use of Nuclear Weapons*²² and *Gabcikovo-Nagymaros*.²³ In the former case, the Court famously established that the obligation of States to use all means within their disposal to avoid activities within their territory or jurisdiction causing significant damage to the environment of another State is now part of the corpus of international law relating to the environment. In the latter case, the Court reiterated that in environmental protection, prevention is required due to the nature of damage to the environment.

The principle of prevention accordingly seeks to ensure that measures are taken to prevent environmental harm from potentially harmful activities either within a State's border or jurisdiction or outside its border, transcending to another State's territory.²⁴ Within this, certain duties lie to ensure the full implementation of the principle. Firstly, to address the risk of harm, carrying out environmental impact assessments (EIA) to ascertain the nature and extent of damage that may result from the activity is the

²⁰ *Arbitration Regarding the Iron Rhine Railway ('Ijzeren Rijn') Railway Between: The Kingdom of Belgium and the Kingdom of the Netherlands* (2005) PCA RIAA XXVII, 35.

²¹ *Trail Smelter (United States of America v. Canada)* (Arbitration Tribunal) (1941) 3 RIAA 1905, 1965.

²² *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* (1996) ICJ Rep. 242.

²³ *Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia)* (1997) ICJ Rep. 7.

²⁴ Hickey and Walker, (n. 16).

responsibility of the State where the activity is taking place.²⁵ The EIA also discloses the type of preventive measures that can be taken to prevent or mitigate the harm. Where the harm is likely to be transboundary, States are duty-bound to inform the other State of the nature of the activity and the effect which can be the likely result of the activity. Cooperation with the other State to mitigate any harm that may result is another duty of the State where the activity originates.²⁶ The performance of these duties gives effect to the principle in ensuring that the environment is protected. Yet even where the preventive measures are taken, the State responsible will still be liable.

c. The Polluter Pays Principle and Duty to Compensate for Harm Caused

The polluter pays principle, as one of the foremost principles of international environmental law, dictates that the polluter must pay for pollution caused. In other words, those responsible for causing pollution to the environment must bear the cost of environmental remediation, pollution prevention and control and compensation to victims of harm caused by their activities on the environment.²⁷ According to Awodezi, the polluter pays principle means that the polluter should bear the cost of carrying out measures decided by the authority to ensure that the environment is in an

²⁵ Nicolas Sadeleer, 'The Principles of Prevention and Precaution in International Law: Two Heads of the same Coin?' in M. Fitzmaurice et al., (eds) *Research Handbook on International Environmental Law* (Edward Elgar Publishing: 2nd Ed 2021)162-164.

²⁶ Ibid.

²⁷ C. M. Inwang, 'Application of the Polluter Pays Principle in Environmental Management' [2021] 9 (1) *International Journal of Innovative Legal and Political Studies*, 74-80.

acceptable state.²⁸ The polluter pays principle is the core of environmental liability. The protection of the environment is crucial to its sustainability, and therefore, those who cause harm to it should be held liable.

The polluter pays principle is one of the most enforced principles of international environmental law, finding itself in every national environmental or criminal legislation, international environmental treaties or common law criminal or civil law. The Polluter Pays Principle was first formally articulated in 1972 by the Organisation for Economic Cooperation and Development (OECD) to make the party pay for damages done to the environment it was responsible for polluting.²⁹ According to the OECD, while the polluter pays principle generally means that the polluter should pay for the cost of pollution prevention and control measures, where a State decides, the principle can be extended to making the polluter pay compensation to the victims of the damage.³⁰ International law has, however, come to accept the broad understanding of the polluter pays principle. The Rio Declaration under Principle 16 states that “*the polluter should ... bear the cost of pollution...*”³¹ Similar provisions are contained in the Stockholm Declaration.³²

²⁸ Henry Awodezi, ‘The Polluter Pays principle and the Rising Waves of Environmental Harm in Nigeria: How well are the Polluters paying?’ [2023] 9 (2) *Delta State University Law Review*, 168.

²⁹ OECD, ‘Guiding Principles concerning International Economic Aspects of Environmental Policies, 1972; OECD, ‘The Polluter Pays Principle: Definition, Analysis, Implementation’ (OECD: 26th February, 2008).

³⁰ *Ibid.*

³¹ Principle 16, Rio Declaration, 1992.

³² Principle 22.

Under the Nigerian legal framework, the polluter pays principle is well established, even though its enforcement is faced with challenges. Nigeria's environmental laws make provisions for civil or criminal liability for environmental damage caused by the polluter.³³ Liabilities extend to fines, damages, compensation or remediation.³⁴ In the case of *Milieudefensie v. Shell*,³⁵ the Nigerian subsidiary of the international oil giant Shell was held liable for damage caused by an oil spill, and compensation was awarded to the victims to the tune of 15 million euros.

The common law torts of negligence, nuisance and trespass are some of the ways of implementing the polluter pays principle,³⁶ which have been applied in Nigerian courts.³⁷ Perpetrators of pollution have been held liable in negligence where there exists a duty of care to ensure that their operations do not cause environmental damage. As such, where damage occurs, and it is established that a duty of care to prevent such exists, the perpetrator will be held liable for breach of that duty of care and will be made to pay for the damage caused.³⁸ The rule of strict liability established in *Rylands vs Fletcher*³⁹ also created a civil liability on perpetrators of environmental

³³ Sani M. Adam, Ibrahim Mohammed and Ogbale Oganca, 'Liabilities for Environmental Degradation in Nigeria: Local Peculiarities and Global Concerns' *LNS(A)* [2023] 1 xxxii 1-2

³⁴ *Ibid.*

³⁵ *Milieudefensie v. Shell* ECLI:NL:GHDHA:2021

³⁶ T. C. Eze, 'Redress for Pollution Damage Under Common Law in Nigeria: An Appraisal'[2018] 3 (1) *Journal of Law and Global Policy*, 1-3.

³⁷ *Shell Petroleum Development Company v Otoko* (1990) 6 NWLR (Pt. 159) 694, *Chinda v Shell Petroleum Development Company Limited* (1974) 2 RSLR 1.

³⁸ *Milieudefensie v. Shell* (n. 35)

³⁹ (1868) LR 3 HL 330.

damage, which is in line with the polluter pays principle.⁴⁰ In one such case of *Umudge v. Shell B.P. (Nig) Ltd*⁴¹ and additionally in *SPDC v Anaro*,⁴² the courts held that the polluters were strictly liable for the pollution caused by them. Therefore, if any pollution occurs, the polluter will be strictly liable to pay compensation and take up remedial actions for the damage caused to restore it to a good state. In the case of *Shell v. Isaiah* (2001),⁴³ the Supreme Court also upheld the strict liability principle for oil pollution spills.

Criminal liability for environmental pollution is seen all over Nigeria's environmental protection laws. Environmental agencies in Nigeria are empowered to prosecute perpetrators of environmental damage.⁴⁴ Additionally, the rule of proof beyond a reasonable doubt applies especially for issues that fall under the Criminal Code Act.⁴⁵ Strict liability offences are seen under the extant regulatory framework, which prescribes environmental offences and penalties where any are committed.⁴⁶

The polluter pays principle is more than just an environmental law principle. It has evolved into an economic term. Companies that industrialise more, which of course results in pollution, are now being required to pay more in the form of carbon taxes or other environmental

⁴⁰ Muhammad Sani 'Liability and Compensation for Environmental Damage' [2020] 18 (6) *African Scholar Journal of Humanities and Social Sciences*, 396.

⁴¹ (1975) 1 SC 155.

⁴² (2000) 10 NWLR (Pt. 676) 248.

⁴³ (SC 75/1997) [2001] NGSC 24 (18 May 2001)

⁴⁴ S. 27-29, NESREA Act, 2007 (as amended).

⁴⁵ S. 245 and 247, Criminal Code Act Cap P3.

⁴⁶ S. 10, Sea Fisheries Act, 1992.

taxes.⁴⁷ Under any form of Emissions Trading System, such as the EU-ETS, companies have a limit on how much carbon they can emit, so where they emit less or more, they can buy and sell permits for carbon emissions, creating a market-based incentive for companies to reduce emissions and sell surplus permits, thereby making them invest in cleaner technologies.⁴⁸ So, through the polluter pays principle, economic advantages can still be gained alongside measures in place to protect the environment.

The *Chorzow Factory* Case highlights the importance of paying for the consequences of any illegal act caused, albeit in a general circumstance.⁴⁹ Since the polluter pays principle extends to paying reparations or compensation for environmental damage caused, the need to promote its implementation always remains ever present.

3.0 NIGERIA'S LEGAL AND INSTITUTIONAL FRAMEWORK EMBODIES THE PRECAUTION, PREVENTION, AND POLLUTER PAYS PRINCIPLE

a. National Legal and Institutional Framework

Environmental principles are embedded within Nigeria's national and domestic legal framework, and it has established institutions and agencies saddled with the responsibility of implementing environmental laws, rules, guidelines and standards within which environmental principles exist.

⁴⁷ Mizan R. Khan, 'Polluter Pays Principle: The Cardinal Instrument for Addressing Climate' *Laws* [2015] 4 (3) 638-653.

⁴⁸About the European Union Emissions Trading System (EU ETS). <https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/about-eu-ets_en> Accessed 24th August, 2025.

⁴⁹ *Chorzow Factory (Indemnity) Case* (1928) PCIJ Ser. A. No. 17.

The Constitution, being Nigeria's supreme law, embodies the governance structure of Nigeria, including its institutions, States, rights and duties and ancillary matters. But of interest is Section 20, which provides that the government will protect the environment, including the air, land, forest, water and wildlife of Nigeria. This provision embodies the core theme within the precautionary, preventive, and polluter pays principles. This is an embodiment of the principle of responsibility, not damaging the environment. The section also gives the basis of the enactment of all other environmental laws of Nigeria, which provide for environmental protection. Even though this section is not justiciable by virtue of Section 6 (6) (c), subsequent case law such as the case of *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*⁵⁰ and the government's adoption of international environmental conventions and treaties pursuant to Section 12 which is an embodiment of the principle of cooperation with States and the international community to collectively protect the environment, gives credence to its justiciability within its national legal system.

Nigeria has ministries and agencies that are charged with the responsibility of managing the environment, protecting wildlife, conserving biodiversity, championing Nigeria's sustainable development goals, implementing the various environmental legislations, including international environmental conventions and treaties. The foremost ministry is the Ministry of Environment, headed by the Minister, made up of several agencies and departments, which formulates policies for the environment and implements hand-in-hand with other environmental laws.⁵¹

⁵⁰ [2019] 5 NWLR (PT 1666) 518.

⁵¹ Ministry of Petroleum Resources, 'Our Key Policies and Initiatives.'
<<https://petroleumresources.gov.ng>> Accessed 22nd August 2025.

The Ministries of Petroleum Resources,⁵² Environment, Aviation,⁵³ Marine and Blue Economy⁵⁴ are some of the important federal government ministries that effectively implement Nigeria's environmental laws and obligations to protect the environment and regulate human activities so that they do not harm the environment. Some of the national policies formulated by these ministries, all of which embody the aforementioned principles, include: National Environment Policy,⁵⁵ National Energy Policy⁵⁶ and National Gas Policy.⁵⁷

After the Constitution, the next primary environmental protection legislation is the National Environmental Standards and Regulations Enforcement Agency Act, 2007 (as amended), which establishes the National Environmental Standards and Regulations Enforcement Agency (NESREA) with the mandate to protect the environment, conserve biodiversity and in general, achieve sustainable development of Nigeria's

⁵² Ministry of Petroleum Resources, 'Our Key Policies and Initiatives.' <<https://petroleumresources.gov.ng>> Accessed 22nd August 2025.

⁵³ Federal Ministry of Aviation and Aerospace Development, 'About us.' <<https://aviation.gov.ng/index.php>> Accessed 23rd July, 2025. FMAAD, 'Nigeria is Committed to playing her part in Global Efforts to Combat Climate Change – Keyamo' (9th April, 2025). <<https://aviation.gov.ng/index.php/aviation-news/press-release/nigeria-is-committed-to-playing-her-part-in-global-efforts-to-combat-climate-change---keyamo>> Accessed 22nd August 2025.

⁵⁴ Osagie Edward, 'Marine and Blue Economy Ministry, NIMASA, Committed to Promoting Industry Partnerships – Oyetola' (NIMASA: 19th September, 2024). <<https://nimasa.gov.ng/marine-and-blue-economy-ministry-nimasa-committed-to-promoting-industry-partnerships-oyetola/>> Accessed 22nd August 2025.

⁵⁵ Federal Ministry of Environment, 'National Policy on the Environment' (Revised 2016).

⁵⁶ Energy Commission of Nigeria, 'National Energy Policy', 2022.

⁵⁷ Ministry of Petroleum Resources, 'National Gas Policy', 2017.

natural resources.⁵⁸ The Agency is also under a duty to collaborate with connected agencies, ministries and stakeholders within Nigeria and outside, to implement other environmental laws, regulations, guidelines and standards.⁵⁹

The powers of the Agency include setting standards and regulations for the prevention, reduction and elimination of pollution and other forms of damage to the nation's environment and for its restoration and enhancement thereof.⁶⁰ The Act also provides for the prohibition of the discharge of hazardous substances into Nigeria, its waters and adjoining shorelines, except as otherwise permitted or authorised under any law in force in Nigeria.⁶¹ Discharge in any manner and from any source is prohibited.⁶² Offences and punishments of fines or imprisonment therefor for environmental pollution are also stipulated under the Act.⁶³

By ensuring that polluters are punished, mandating that companies take steps and precautions to prevent damage from their actions, these provisions of the Act embody the precaution, prevention, and the polluter pays principle. They are further evident in the National Oil Spill Detection and Response Agency Act 2006 (as amended), another crucial environmental legislation that deals with the protection of the environment from oil spills and oil-related pollution. The Act establishes the National Oil Spill Detection and Response Agency (NOSDRA).⁶⁴ The Agency

⁵⁸ S. 2 NESREA Act, 2007.

⁵⁹ *Ibid.* s. 7.

⁶⁰ S. 8.

⁶¹ S. 27-29.

⁶² *Ibid.*

⁶³ S. 20-26.

⁶⁴ S. 1, NOSDRA Act, 2006.

protects the environment from oil spills and oil pollution, sets up technology for detection of and response to oil spills, undertake clean ups of areas polluted by oil, enforces international conventions and treaties relating to oil and gas and oil spill management and cooperates with international organisations on matters of recovery, disposal and clean-up of the environment to the best extent.⁶⁵ Offences under the section include failure to report an oil spill and failure to clean up impacted sites. Penalties for failure to report an oil spill are a fine of ₦2,000,000 for each day of failure to report the spill, while failure to clean up impacted sites attracts a fine of ₦5,000,000 or imprisonment for 2 years or both.⁶⁶

Environmental offences under several Acts, such as Harmful Wastes (Special Criminal Provisions) Act 1988,⁶⁷ Sea Fisheries Act 1992,⁶⁸ Oil in Navigable Waters Act 1968, Criminal Code Act Cap P3,⁶⁹ Nigeria Maritime Administration and Safety Agency Act 2007,⁷⁰ Merchant Shipping Act 2007⁷¹ and accompanying Marine Environment Regulations 2012, contain the embodiment of the precaution, prevention and polluter pays principle. The Petroleum Industry Act, 2021 also embodies the polluter pays principle by requiring that an environmental remediation fund be set up for rehabilitation of the environment where pollution occurs and the operator which is the oil company that is usually the perpetrator of oil spills and pollution in the Niger Delta⁷² is required to make a financial

⁶⁵ S. 5, 6 and 7

⁶⁶ S. 6 (2) and (3)

⁶⁷ S. 1-6, HW (SCP) Act 1988.

⁶⁸ S. 1, Sea Fisheries Act, 1992

⁶⁹ S. 245-258, CCA Cap P3

⁷⁰ S. 44-45, NIMASA Act, 2007

⁷¹ S. 336, MSA 2007

⁷² S. 103, PIA, 2021

contribution therein as condition for grant of the lease or license to carry out relevant operations.⁷³ The Act also requires that a Licensee submit an environmental management plan in respect of projects which require Environmental Impact Assessment in line with the extant environmental Act.⁷⁴ The EIA process, as provided under the EIA Act, is carried out to ascertain the effects of the project on the environment,⁷⁵ whether the project should go on, and what measures to put in place to prevent or minimise any harm that may result from the project.⁷⁶ Oil and gas operations are one of these projects that affect the environment under the EIA Act.⁷⁷

Where victims of environmental damage do not have the wherewithal to make polluters pay for environmental damages caused, through fundamental human rights enforcement and through NGOs, perpetrators can be held liable for environmental damage caused and will be ordered to pay commensurate compensation or commence remediation of the environment. Nigeria's Constitution provides for recourse to the national Courts where any right, including environmental rights, which are now recognised in Nigeria, has been infringed upon.⁷⁸ Thus, the public may seek redress within the Courts though they are oftentimes unaware of their environmental rights. The Fundamental Human Rights Enforcement Rules, 2009 expands on these rights by providing that persons or a group of people or through representation by an NGO under what is known as Public

⁷³ Ibid.

⁷⁴ S. 102

⁷⁵ S. 1, EIA Act 1992

⁷⁶ S. 24, 36, 38, 40, 55.

⁷⁷ Schedule, 1 (12), pursuant to S. 12, EIA Act 1992

⁷⁸ S. 46, CFRN, 1999 (as amended)

Interest Litigation,⁷⁹ may seek redress from the Court of law to enforce their environmental rights.⁸⁰

Nigeria has also adopted several international environmental treaties and conventions, which are considered below.

b. International Legal and Institutional Framework

Nigeria is a party to several international environmental conventions, treaties and Multilateral Environmental Agreements (MEAs). The prevention, precaution and polluter pays principle is the core of several pollution conventions that Nigeria is a party to including the IMO Convention 1948,⁸¹ the London Dumping Convention, 1972,⁸² the Bamako and Basel Convention on Transboundary Movement of Hazardous Waste, adopted in 1991 and 1989 respectively,⁸³ Convention on the Prevention of Pollution from Ships 1973,⁸⁴ as well as the International Convention on Civil Liability for Oil Pollution Damage 1969 and the amending Protocol of 1992.

⁷⁹ *Centre for Oil Pollution Watch v. NNPC* [2019] 5 NWLR (PT 1666) 518; *SERAP v. President of the Federal Republic of Nigeria* [2009] 2 APP 11, 13-17

⁸⁰ FREP Rules, 2009, order 2, rule 1.

⁸¹ Convention was signed by Nigeria in 1962.

⁸² Convention has been domesticated in Nigeria by virtue of the Merchant Shipping Act 2007.

⁸³ Nigeria became a signatory to the Bamako Convention in 2008, while the Basel Convention was ratified on 13th March, 1991.

⁸⁴ Nigeria ratified the Convention in May, 2002 through the International Convention for the Prevention of Pollution from Ships 1973 and 1978 Protocol (Ratification and Enforcement) Act 2007 (No. 54 of 2007). The Merchant Shipping Act 2007 makes the Convention applicable in Nigeria.

Further multilateral environmental agreements that embody these essential principles include the UN Convention on the Law of the Sea 1982, UN Framework Convention on Climate Change 1992, Paris Climate Change Agreement 2015 and accompanying protocols. More recent international legal efforts on environmental pollution within the sphere of climate change involve innovative ways to make polluters more responsible in paying for pollution caused and simultaneously taking precautionary steps to prevent environmental damage or drastically reduce it. This is why carbon taxes and emission trading systems are increasingly becoming more recognised. These Conventions, Multilateral Environmental Treaties (MEAs) and soft law declarations have played a fundamental role in shaping Nigeria's environmental law.

4.0 ROLE OF NGOS AND THE LARGER SOCIETY IN ENFORCING PPP PRINCIPLES

The role played especially by NGOs is crucial to the actualisation of these rights and principles of environmental law. NGOs such as SERAP, Centre for Oil Pollution Watch and others have fought the battles for the recognition and enforcement of environmental rights in the Courts on behalf of the public. Landmark cases⁸⁵ are proof of the role they have played in advancing Nigeria's jurisprudence on the protection and enforcement of environmental rights and principles. NGOs, Civil Society Groups, stakeholders and the masses have also contributed to raising and increasing awareness of the principles discussed in this paper.⁸⁶

⁸⁵ *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* [2019] 5 NWLR (PT 1666) 518; *SERAP v. President of the Federal Republic of Nigeria* [2009] 2 APP 11, 13-17.

⁸⁶ Eghosa Ekhaton, 'The Role of Non-Governmental Organizations in the Environmental Justice Paradigm' [2017] 8 (2) *NAUJILJ* 28-36.

With NGOs and other aligned groups and organisations both on a national and international level, pressure is being placed on the government to implement environmental legislation, hold polluters responsible, and to protect the environment and sustain good environmental governance.⁸⁷ NGOs and the larger society are also important in actualising environmental principles because of the massive role they play in cleanups, awareness campaigns, empowerment, support for victims and those who have suffered environmental damage and appeals for accountability to hold polluters responsible for their actions or inactions.⁸⁸ These bodies are also involved in environmental issues internationally, participating in climate negotiations, advocating for more commitment towards climate change mitigation and adaptation, green energy and overall reduction of carbon emissions.⁸⁹ Through their roles and actions, even in protests and civil disobedience, the precaution, prevention and polluter pays principle receives more recognition.

5.0 CHALLENGES FACED

a. Gaps in implementation

This paper recognises that Nigeria is a party to numerous international environmental conventions and treaties and has enacted several of its own environmental legislations, which is very commendable. However, despite the ratification of the treaties and the enactment of the legislation,

⁸⁷ Katherine Foo, 'Examining the Role of NGOs in Urban Environmental Governance' [2018] 77 *Cities*, 67-72.

⁸⁸ R. K. Nagaraju, 'Role of Non-Governmental Organizations in the Protection of Environment: A Sociological Study' [2018] 4 (10) *International Journal of Applied Research*, 182-187.

⁸⁹ Basa D. Olivier, 'Contributions of the Environmental Non-Governmental Organizations and International Law on Climate Change' *International Journal of Environment, Agriculture and Biotechnology* [2017] 2 (3) 1287-1293.

widespread implementation of the same is largely lacking.⁹⁰ Compliance in Nigeria is weak, and this is attributed to several factors, including lack of political or governmental will, financial and technical constraints and the lack of enough technical personnel to enforce the provisions of these legislations.⁹¹

b. Presence of outdated legal framework which are in dire need of reform

Some of Nigeria's environmental laws, such as the Oil in Navigable Waters Act 1968,⁹² contain provisions for penalties for environmental pollution which are negligible or not clearly stated. Some of these laws do not reflect the present realities of environmental issues in Nigeria, thereby enabling weakened implementation and enforcement of Nigeria's environmental framework.

c. Lack of extensive awareness and Technological inefficiencies

While there is increasing awareness about environmental principles, extensive awareness is lacking⁹³, especially across semi-urban areas, local communities, villages, suburbs and other areas that have little to no idea of their environmental rights and principles that sustain the existence of international environmental law. Additionally, deficiencies in technology

⁹⁰ Gabriel Obahor and Godwin Asibor, 'Evaluation of International Environmental Laws ratified by Nigeria and Implications for National Development' [2025]3 (1) *International Journal of Sub-Saharan African Research*, 574.

⁹¹ Ibid.

⁹² Oil in Navigable Waters Act, 1968, s. 1-3.

⁹³ O. C. Nwankwo, 'The Relevance of Sustainable Environmental Education for National Stability in Nigeria' *Journal of Research in Education and Society* [2010] 1 (2 & 3) 1924; Chinyere A. Onuoha, et al., 'Environmental Challenges Awareness in Nigeria: A Review' [2022] 5 (2) *African Journal of Environment and Natural Science Research*, 1-14.

that are useful for combating pollution, environmental degradation, promoting green energy adaptation, climate change mitigation and adaptation, as well as carbon and other harmful emissions reduction, limit the extent of the applicability of the environmental principles discussed in this paper.⁹⁴

6.0 CONCLUSION AND RECOMMENDATIONS

This paper has provided an insight into precautionary, prevention, and polluter pays principles of international environmental law and their embodiment within international and national environmental legislations and institutions. These principles are fundamental because they provide a framework for the negotiation of new treaties and conventions over the years, as well as their implementation. National environmental laws, policies and guidelines are also enacted and adopted, having their foundations in these widely recognised principles. Additionally, their application guides both national and international judicial bodies in resolving environmental disputes, and they help guide human activities in the right direction towards the attainment of sustainable development. While the challenges to the applicability of these principles in Nigeria and globally exist, optimal progress in the widespread application and implementation of these principles can be achieved if the following recommendations are put in place.

For optimal implementation of the principles of international environmental law considered in this paper, the following recommendations should be put in place in Nigeria and globally:

⁹⁴ Florence O. Akaabar, 'Challenges to the Effective Performance of Environmental Institutions in Nigeria: How Far? So far?' [2025] 14 (1) *International Journal of Innovative Research and Development*, 91-101.

- a. Investment in science and technology, including research across both public and private sectors, that monitors and enhances compliance with the environmental framework.
- b. Explore an emission trading and carbon taxation system like the EU-ETS, but unique to Nigeria's landscape, which will place more burden and responsibility on polluters to take precaution, prevention and responsibility for even the slightest bit of damage seriously.
- c. Increased awareness of environmental principles across different levels of education, public and private sectors, across levels of governance, through the media, dedicated lectures, conferences and awareness campaigns.
- d. Renewed government and political will and commitment towards increased enforcement, application and implementation of sound environmental laws that embody these principles, making them a reality.
- e. There is a need to reform outdated environmental legislation that does not address modern environmental challenges discussed or reflect modern solutions to them.