CHAPTER ONE:

INTRODUCTION

For a seminal work of this kind on the law relating to environmental impacts and regulations in Nigeria, a brief introductory of the country is necessary. With its capital territory as Abuja[1], Nigeria is one of the countries in the sub-region of West Africa. Ceded to Great Britain by King Kosoko of Lagos, Nigeria[2] became a British Colony in 1861. Nigeria got its name in 1914, after the amalgamation of the Northern and Southern Protectoratesby Sir Fredrick Lord Lugard, the then Governor-General of Colonial Nigeria. Thus, the entity which is today known as Nigeria was once divided into the Northern and Southern Protectorates.[3]

With a tropical climate, rain forest vegetation[4] and richly blessed with oil and gas, Nigeria at the time of this research consists of 36 States and its Federal Capital Territory, Abuja, which is accorded a State status. The totality of the States and Federal Capital Territory consists of 774 Local Government Areas.[5] For effective administrative convenience and politico-economy concerns, the States are zoned into six Geo-political zones, namely: South-South;[6] South-East;[7] South-West;[8] North-East;[9] North-Central;[10] and North-West.[11]

Environmental impact assessment (EIA) is targeted at certain kinds of projects or investments which have the potency of impacting the ecosystem. To this extent, EIA evaluates the possible or anticipated effects of a project. This aim of the EIA is usually

[1] Abuja became Nigeria's Federal Capital Territory in 1991. It was moved from the commercial city of Lagos which until 1991 was the capital of Nigeria since independence in 1960- October, 1.
[2] As used here, reference to Nigeria means Lagos because Lagos which was ceded a British Colony became the Federal Capital Territory of independent Nigeria in 1960. Abuja only became Nigeria's FCT since 1991.
[3] Another word for Protectorate is region, territory or dominion.
[4] *Nigeria*,Encyclopaedia Britannica 2009 Student and Home DVD Edition, Chicago.
[5] Part I, First Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[6] Comprised of, Akwa-Ibom, Bayelsa, Cross River, Delta, Edo, and Rivers States.
[7] Comprised of Abia, Anambra, Ebonyi, Enugu, and Imo States.
[8] Ekiti, Lagos, Osun, Ondo, Ogun, and Oyo States.
[9] Adamawa, Bauchi, Borno, Gombe, Taraba, and Yobe States.
[10] Benue, Kogi, Kwara, Nasarawa, Niger, and Plateau States and FCT- Abuja.
[11] Kaduna, Katsina, Kano, Kebbi, Sokoto, Jigawa, and Zamfara States.

driven from the planning stage of the project and hinged on sustainable development. In this sense, sustainable development focuses on improving the standards of living in relation to the health of humans and their exercise of control over their natural resources. Sustainable development ensures that project proposals aimed at development do not undermine or take for granted the physical well-being and livelihood of the people who depend on the resources/environment likely to be affected by the projects. For these reasons, there is need for adequate planning before starting an EIA of a project.

The EIA plan involves in the short term the process of decision-making by identifying the potentially significant project proposals.[12] The entire process of EIA is initiated by a project proponent, driven by the Federal Ministry of Environment with the support of States and Local Government Areas environmental agencies; and enforced by the NESREA, including private persons who act as whistleblowers.

1.1.1 **Background of Study**:

To the researcher, the problem of environmental protection in Nigeria is not attributable to lack of legislation or enabling laws, but largely due to non-compliance with environmental laws. Apart from the apparent ubiquity of environmental enactments, it is noteworthy that most of the laws are not only out-dated but are hardly realisable as they were copied from some other foreign jurisdictions without recourse to the Nigerian geographical and developmental peculiarities and realities. Thisdiscovery necessitated the interest in conducting a seminal research on an analysis of the major lawsand institutions regulating environmental impactsin Nigeria; with a view to proffer solutions to the salient challenges of environmental impacts and the corresponding institutions saddled with the responsibility of giving effect to the said major laws.

[12] GC Ofunne, *Environmental Impact Assessment in Nigeria* (Port Harcourt: Panam Pat Nigeria Press, 2010) forward notes.

1.1.2 **Statement of Problem**:

The Nigerian environment, from where various technological and industrial activities including oil production and construction works are carried out is faced with challenges of adverse impacts on humans, crops, forest vegetation, and water resources. However, these impacts are not attributable to lack of legislation, but largely due to non-compliance with extant environmental laws. Furthermore, most major projects for which an assessment of their impacts on the Nigerian environment was required have been executed without recourse to whatever happens thereafter.[13] Something urgent is required to be done or the Nigerian environment and its populace of living things will suffer greatly for it. In order to tackle the scourge of adverse environmental effects in Nigeria, it is pertinent to isolate the major laws and institutions saddled with the purpose and responsibility of regulating environmental impacts of projects capable adversely affecting the Nigerian environment. Are there any dangers in executing projects without conducting an environmental impact assessment? Are the laws adequate and the institutions established thereby satisfactorily performing their roles for the purpose of tackling the problems of environmental impacts assessment in Nigeria? If not, what should be done to address the inadequacies? Furthermore, what is the government doing to solve the problem of environmental impacts of projects vis-à-vis the need to develop and protect the environment?

1.1.3 **Aim and Objectives of Study**:

The research focused primarily on a holistic analysis of the core laws and institutions regulating environmental impacts in Nigeria, under the Environmental Impact Assessment (EIA) Act, National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, and National Oil Spill Detection Response Agency (NOSDRA) Act. Whether the agencies established by these laws are properly equipped, funded and

[13]Examples include: construction of a high-rise building, hospitals, morgues, markets, abattoirs, telecommunication gadgets, oil drilling facilities and pipelines

given the required cooperation by Government at all levels in giving effect to environmental impacts assessment of projects in Nigeria is one of the objectives of this research. Notably, one of the objectives of the National Environmental Standards and Regulations Enforcement Agency is to encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or trans-state or on the environment of bordering towns and villages. However, this is hardly realisable as the practice is for most proponents of such significant projects to do everything to evade assessment and evaluation of the projects. Besides, it would appear that the wording of the Environmental Impact Assessment Act, 'to encourage the development of procedures for information…(emphasis mine)'[14] relatively makes the objective of information gathering in environmental impact assessment a passive one, especially where the requirement of impact assessment of the project is mandatory.

There is the need to develop a system of information gathering for the purpose of giving effect to the provisions of the Environmental Impact Assessment Act. Furthermore, as there is at present no adequate information coordination or apparatus through which NESREA could mount a thorough surveillance from its office, to trace and assess several newly initiated and on-going projects capable of impacting the environment on a daily basis, it could hardly cover the field in that regard. This is particularly so, as the requirement of environmental impact assessment is to be carried out prior to the implementation of the projects. Consequently, in the absence of any cognizable means of discovering or locating projects sites without any information or physical presence, much is left to be desired despite the existence of the EIA and NESREA Acts. Similarly, with respect to oil spill incidents, without adequate surveillance of oil and gas pipelines and installations, it would be difficult to tackle several occurrences of illegal oil bunkering and pipeline vandalism.

[14]Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria, 2004, s. 1(c).

Accordingly, it is imperative to establish an institutionalised information coordination system to serve as a link between NESREA and the larger society in identifying projects capable of adverse impacts on the environment, as well as between NOSDRA and appropriate security agencies. No doubt, an institutionalised avenue of retaining, using and rewarding the services of whistle blowers as part of the field staff of the NESREA, albeit on a part time arrangement will go a long way in spying most projects that require impact assessment. Native people can be retained as the whistle blowers in order to gather information about on-going activities in their localities. Not only will the trend aid in fishing out environmental defaulters to face the penalty under the law; it is a clever way of creating awareness on the expectations of the law, and of course more job opportunities.

1.1.4 **Methodology of Research**:

The methodology adopted was the doctrinal approach with respect to extracting knowledge from written works, such as: textbooks, International/regional instruments, journal articles, newspaper, case laws, and internet sources. Information was also sourced informally via interactions with some specialist staff of Federal Ministry of Environment, NESREA and NOSDRA, who did so, on the official confidence that their names and portfolios would not be mentioned. Also,some of the primary materials used were got through the assistance of some government and private projectscontractors in Port Harcourt, Rivers State, Ibadan, Oyo State and Ile-Ife, Osun State all in Nigeria.

1.1.5 **Significance of Study**:

The research work is significant and a contribution to knowledge because among various recommendations and reform to environmental law, it analysed:

i. The core legal and institutional frameworks for environmental impact assessment and regulations in Nigeria.

ii. The benefits of compliance and consequences of non-compliance with environmental impact laws and regulations.

iii. The duplicity of functions and the disharmony amongagencies that regulate environmental impacts assessment and the need for checks and re-structuring.

iv. Some contentious issues relating to environmental impact assessment in Nigeria.

v. A comparative of key laws on environmental impact and institution in selected foreign jurisdictions.

vi. A case study of some salient judicial decisions on environmental impacts and institutions.

1.1.6 **Scope of Study**:

Although there are various laws touching on the environment generally and environmental impact assessment in particular, the scope of this work however is limited to a critical analysis of selected major laws regulating environmental impacts assessment in Nigeria, namely: Environmental Impact Assessment Act;[15] National Environmental Standards and Regulations Enforcement Agency Act, and National Oil Spill Detection Response Agency Act, as well as the mandates of the institutions established by these laws.

1.1.7 **Limitation of Study**:

Although, the research examined in relative detail the Environmental Impact Assessment Act, National Environmental Standards and Regulations Enforcement Agency Act and National Oil Spill Detection and Response Agency Act, as well as some regulations made pursuant to these Acts, it did not consider various other laws relating to the protection of the environment mentioned in such detail.It was not possible to have a practical experience of the scientific/laboratory conduct of environmental impact assessment. However, a visit to the NOSDRA office and NESREA Reference Laboratories, both in

[15]Cap E12, Laws of the Federation of Nigeria, 2004.

Port Harcourt, only availed the opportunity of seeing some of the apparatus and equipment, some of which their various uses were not clarified, as the NESREA staff indicated that they were purely scientific and they did not want to leak information beyond policy bounds. As such, nothing was got of how collected samples from the environment are analysed to ascertain their actual impacts. Understandably, had the equipment and their functions been explained to the researcher, more knowledge would have been acquired on how practical tests are conducted during sampling and analysis. It would have perhaps attracted more supports to aid the Agency procure other vital equipment necessary for their routine sampling and laboratory tests.

Furthermore, the orchestrated lack of vital information that would have aided a practical holistic appraisal of the Federal Ministry of Environment and NESREA establishes the fact that several Agencies' institutional framework makes research difficult with their attendant bureaucratic bottlenecks. For example, when a Zonal Director referred the researcher to a State Coordinator to volunteer any materials requested to aid this research, the later only issued a NESREA quarterly magazine; stating that that was all within the State's office domain. A return response to the Director achieved minimum success as the polite answer was that he could not do everything further, urging the researcher to make do with what the State Coordinator had handed him.

1.1.8 **Literature Review**:

Nwafor:[16]in his work provided the overall scientific and professional guidance for best practices in environmental and social impact assessment of major proposed development projects, as well as environmental monitoring and the audit of operational projects. Inter alia, the work touched on: EIA pre-study phase; some EIA methods; public participation in the EIA process; social impact assessment; health impact assessment, environmental

[16]JC Nwafor, *Environmental Impact Assessment for Sustainable Development: The Nigerian Perspective*(Enugu: Environment and Development Policy Centre for Africa (EDPCA) Publications, Enugu, 2006).

technology assessment; climate change and sustainable development as it relates to the environment, and guidelines for synthesising EIA study results. In a nutshell, the work considered technological, scientific or systematic institutional or organisational approach of the EIA process, under the defunct FEPA, and Federal Ministry of Environment from the geographer's point of view. It did not consider any analysis of extant laws relating to environmental impacts, and institutions in Nigeriaas done in this present research.

Oludayo:[17] This author's book is divided into three main parts. Part one addressed the historical and philosophical backgrounds of modern sustainable development principles. Part two related to sectoral aspects of the environment, such as: biodiversity and conservation, land resources and habitat protection, public health, hazardous waste and chemical management, water and marine pollution, atmospheric pollution and physical planning. Part three discussed the techniques for securing compliance with environmental regulation and remedies for environmental liability, such as: judicial review, litigation, permits, negotiation, inspection and economic incentives.

Admittedly the work to a very great extent touched on the various issues bordering on general environmental law and practice. However, it did not holistically and comprehensively address the legal and institutional frameworks of environmental impact assessment, and institutions in Nigeria as done by this present research work. Furthermore, the book was written under the former legal regime of Federal Environmental Protection Act and the defunct Federal Environmental Protection Agency. Accordingly, this present work is an update of the current law and environmental regulatory agencies in Nigeria, examples of which are: the National Environmental Standards and Regulations Enforcement Agency (NESREA) and the National Oil Spill Detection and Response Agency (NOSDRA) established by the NESREA Act and NOSDRA Act respectively. Thus, nothing was discussed in the Oludayo's work under

[17] AG Oludayo,*Environmental Law and Practice in Nigeria*(Lagos: University of Lagos Press, Akoka, Lagos, 2004).

review about NESREA and NOSDRA as these core environmental regulatory agencies were not yet established at the time.

Okorodudu-Fubara:[18] Drawing attention to some of the legal aspects of the problem of protecting the environment in Nigeria, this author underscored an appraisal of the policy on the environment in Nigeria and the National Policy on the Environment, including the functions of the defunct Federal Environmental Protection Agency. Furthermore, the book focused more on issues of environmental problems such: as drought, deforestation, ground and surface water contamination, fisheries loss, wildlife and biodiversity depletion, soil degradation, gully erosion, coastal erosion, air pollution and over population. It is pertinent to emphasise that despite its relative wide coverage of the subject, the book did not like this present research consider specifically the major laws relating to environmental impact assessment and institutions in Nigeria. This present work is also more practical-oriented since it concentrates more on issues of impact assessment and regulations of standards affecting the use of the environment. Unlike the literature under review, this present work is further an update on the current environmental law and environmental agencies saddled with the enforcement of environmental impact and standard issues in Nigeria.

Fagbohun:[19]This author examined the pivotal role of oil in the sustenance of the economy of many nations, especially Nigeria. Given its basic role, oil production as the main stay of the Nigerian economy has also resulted in the pollution of the environment, especially during its discharge and spillage. Furthermore, for its adverse effect on human health, animal and plant life, oil pollution has resulted in the dearth of species and colossal damage to human life. The book also made a comparative appraisal of the law relating to oil pollution and environmental restoration in Nigeria and 16 other

[18] M T Okorodudu-Fubara,*Law of Environmental Protection: Materials and Text* (Nigeria: Caltop Publications Nigeria Limited, 1998).
[19]OFagbohun, *The Law of Oil Pollution and Environmental Restoration: A Comparative Review*(Lagos: Obilade Publishers, 2010).

jurisdictions. Stating the practical guide for regulators on developing effective guidelines for oil spill recovery and environmental restoration, the author examined the challenges facing the judiciary in Nigeria in respect of environmental matters and how those challenges have been tackled in other jurisdictions. He therefore recommends that a synergy can be achieved by linking human rights and environmental protection.

Importantly, despite its wide coverage on the concept of oil production and environmental restoration, the work did not cover the field on environmental impact assessment, and institutions in Nigeria. This apparent lacuna has been addressed and covered by this research which considered other activities of adverse environmental impacts, apart from oil production.

Ikoni:[20] In chapter one of this book, the author conveys an appreciation of the remarkable complexity and functioning of the natural ecosystem, as well as the nature of environmental protection, importance and sources of environmental law. Chapters two and three discussed the concept and types of environmental pollution respectively. The rest chapters, four – fifteen touched other aspects of environmental law: including urban settlements, town planning, human health, consumer protection, industrial establishments, safety at work place, property rights, personal pollution, nature of oil pollution, liability for oil pollution, and development of international environmental law.

Importantly, despite its coverage in terms of the common aspects of environmental law, the book did not do any analysis of the law relating to environmental impact assessment, standards and regulations of projects. Rather, it concentrated more on environmental issues relating to pollution, town planning and health, safety and welfare at work place. Thus, the book's omission of a discourse on proactive measures to be undertaken in order to forestall adverse environmental impacts of projects or activities before embarking on same is a vital area which this present research addressed in great detail.

[20] UD Ikoni, *An Introduction to Nigerian Environmental Law*(Lagos: Malthouse Press Limited, 2010).

Eghort:[21] This book underscored the principles and practice of environmental health control, sanitation and waste control. It therefore focused on the environmental problems of waste dumping, refuse incineration, litter erosion menace, flooding, drain obstruction, pollution, and the functions of some environmental agencies: Federal Environmental Protection Agency and Sanitation Authorities of States. It is pertinent to state that despite its being written in 2010, the author dwelt on discussing the functions of a non-existent agency, the Federal Environmental Protection Agency (FEPA) created by the FEPA Act. Strictly, both the FEPA and FEPA Act had been abrogated and repealed since 2007, three years before 2010, when the book was written. Accordingly, this present research is an update on the current environmental protection and enforcement law and agencies in Nigeria with a view to ensuring that proactive measures are taken to protect the Nigerian environment.

Atsegbua:[22] Structured into eleven chapters, this work examined in detail the burning issues in Oil and Gas Law, including history of the oil and gas industry; ownership and control of petroleum resources; operational licences in the industry; new developments in oil production sharing contracts; the effect of restriction on assignment of oil rights; transfer of petroleum technology; Nigeria Liquefied Natural Gas; and International arbitration of oil investment disputes, amongst others. It is important to state that despite the fact that oil and gas activities impact the environment adversely; the book placed more emphasis on economic development achievable from the industry. This present study therefore among other issues emphasizes that much as the gains from the oil and gas industry boost economic development, the impacts of the activities therefrom may portend great danger to the well-being of the environment and its inhabitants, hence the need to mitigate the negative impacts with precautionary measures of strict environmental impact assessment and compliance monitoring.

[21] UO Eghort, *Aspects of Environmental Law in Nigeria* (Port Harcourt: Pearl Publishers, 2010).
[22] L Atsegbua, *Oil and Gas Laws in Nigeria: Theory and Practice* (Benin: New Era Publications, 2004).

Ogun:[23]Structured into eight chapters, this work is commendable for its effort at spurring environmental non-governmental organisations (NGOs), such as Movement for the Survival of OgoniPeople (MOSOP) to intensify the vexed issue of environmental protection campaigns. The gamut of the book therefore centred on creating more awareness for the citizens to partner with and lobby the government and the major players whose activities affect the environment more, to ensure compliance with the laws, treaties and conventions on environmental protection. Thus, drawing inspiration from the defunct National Environmental Protection Agency, the work appeared to have only isolated environmental problem only on the basis of pollution generally, without a consideration of environmental impacts as x-rayed in this present study. Accordingly, this present work is an update on Ogun's work; first by stating the extant law that repealed FEPA Act, and second by clarifying what, why and how the environment NGOsshould re-strategise to spur compliance with the core laws regulating environmental impacts, in order to chart ways to mitigate or ameliorate the damage already done to the environment.

Okonkwo:[24]Organised into eight chapters, the work dealt mainly on the aspect of environmental liability as it relates to Harmful and Hazardous Wastes, as well as the consequences of pollution and the legal framework on the subject. The work is commendable for its examination of the position of the law on the subject of wastes in some foreign jurisdiction, including America, the Philippines, Bangladesh, Malaysia, France, South Africa and Kenya. However, it is pertinent to underscore that the work was written at a time both the NESREA and NOSDRA Acts had not been enacted and the agencies established by these laws not established. Thus, the work did not cover an

[23]D Ogun, *Non-governmental Organisations, The Law and Environmental Protection in Nigeria* (Jos: Greenworld Publishing Company Ltd, 2002).
[24]RT Okonkwo, *The Law of Environmental Liability*(Lagos: Afrique Environmental Development and Education and Fine Finishing Ltd, 2003).

analysis of the agencies: NESREA and NOSDRA and their enabling laws, which among others constitute the gravamen of this present study.

Atsegbua, Akpotaire and Dimowo:[25] The work by these scholars consists of ten well researched chapters on various aspect of environmental law, including the concept of sustainable development, pollution control and management, waste management, public health, environmental protection and enforcement. Considering the time it was written, the work though touched a bit of environmental impacts assessment and enforcement mechanism by the Federal Environmental Protection Agency; it did not consider the subject with respect to the institutional frame work of NESREA and NOSDRA as done in this study, as these institutions were not yet in existence at the time. Thus, this present work is an update of the law on environmental impacts assessment, as well as the major agencies saddled with the regulation of such assessment in both the oil and non-oil sectors of the Nigeria economy.

Worika:[26] This work is undoubtedly wide in its coverage in making recommendations for coordinating environmental policies on petroleum development in the African continent. Organised into eight chapters, the recommendation proffered in this work addresses the major finding aimed at coordinating an African environmental policy or action plan both at the continental and regional levels, following which the various national policies would reflect the continental policy. However, the work is limited in approach as it centered mainly on the petroleum (oil and gas) sector; unlike this present study which covered aspects of environmental impacts assessment of projects in both the oil and gas industry and the non-oil sectors. The in-depth analysis of the core regulatory agencies for these impacts assessment, as well as the recommendations for their reform is also undoubtedly an area not covered by the work of Worika.

[25] L Atsegbua, V Apkotaire and FDimowo, *Environmental Law in Nigeria: Theory and Practice* (Lagos: Ababa Press Ltd., 2003).
[26]IL Worika, *Environmental Law and Policy of Petroleum Development: Strategies and Mechanisms for Sustainable Management in Africa* (Port Harcourt: Anpez Centre for Environment and Development, 2002).

1.1.9 **Organisational Layout**:

Chapter one gives a general introduction of this research; definitions of key concepts. Chapter two considered the legal and institutional frameworks for environmental impact assessment in Nigeria.The chapter articulates a general idea of some of the various enactments for the protection of the Nigerian environment. As discovered, many of the laws did not specifically provide for environmental impact assessment. However, from their purposes, it is clear that each of them is enacted to ensure a safeguard of the Nigerian environment from adverse impacts

Notably, reference was made to the Nigerian laws as contained in the compilation of the laws of the Federation of Nigeria, 2004. This is because the 2004 compilation remains the latest[27] that was duly approved by an enactment to that effect in 2007. Accordingly, the compilations of Nigerian laws had been published in 1958, 1990 and 2004. In 2007, an Act was enacted to approve or validate the compilation of the revised edition of the Laws of the Federation of Nigeria, 2004 in order to update the laws by the inclusion of enactments after 1990.[28] Consequently, reference by the year of enactment was made to a plethora of extant enactments which are not contained in the 2004 compilations.

Chapter three examined some contentious issues relating to environmental impact assessment in Nigeria.Drawing brief insight from the historical background, uses and types of environmental impact assessment, the chapter focused on the analysis of the theoretical aspects of environmental impacts assessment stages with a view to consider the categories of project for which the process is mandatory and the practical or real life situation of the environmental impact assessment process and stages. Some challenges of environmental impact assessment were also isolated in this chapter.

[27]As at the time of this research.

[28]Revised Edition (Laws of the Federation of Nigeria) Act, 2007. It is An Act to enable effect to be given to the Revised Edition of the Laws of the Federation of Nigeria, or particularly, approval of the Revised Edition of the L.F.N. 2004.

Chapter four analysed some regulations on environmental impacts assessment, thereby appraising efforts of the Federal Ministry of Environment, as well as the National Environmental Standards and Regulations Enforcement Agency, and National Oil Spill Detection and Response Agency at regulatingpossible adverse environmental impacts during execution and operation of applicable projects. Chapter five is a comparative study of key laws on environmental impacts and institutions in selected foreign jurisdictions with the Nigerian legal regimes on the concept. Chapter six is a case study of some salient judicial decisions on environmental impacts and institutions. The research was concluded in chapter sevenwith recommendations.

1.1.10 **Basic Principles of Environmental Impact Assessment**:

Arguably, the principles or doctrines of environmental impacts assessment are well-established basicallypredicated on sustainable development principles, which help to create awareness on some measures adopted in the use of the environment. The following underscore the basic principles of environmental impact assessment, namely:

a) **Public Trust Doctrine**: This principle sees the State as trustee of all natural resources and that the State must put in place measures that are necessary to control the exploitation of the resources and to protect legitimate public interests on the resources. This policy has some bearing in the Land Use Act.[29]

b) **Precautionary Principle**: This emphasizes that where there are threats of serious or irreversible damage, they should not be used as reasons to employ cost-effective means to prevent environmental degradation.

c) **Polluter pays principle**: This principle states that polluter of the environment should bear the cost of preventing or controlling pollution. In other words, a polluter

[29]The enactment section to the Land Use Act, Cap L5, LFN, 2004 provides thus: 'An Act to Vest all Land compromised in the territory of each State (except land vested in the Federal government or its agencies) solely in the Governor of the State , who would hold such Land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organisations for residential, agriculture, commercial and other purposes while similar powers will with respect to non-urban areas are conferred on Local Governments. See also the Land Use Act, s.1.

must incur and off-set every cost occasioned by the pollution he had caused. The polluter pays principle is summarised in the words of Plato, 'If anyone intentionally spoils the water of another ... let him not only pay damages, but purify the stream or cistern which contains the water...'[30]

d) **Pollution prevention pays principle**: This encourages industries to invest positively to prevent pollution.

e) **Principle of inter-generational equity**: This emphasizes that the needs of the present generation should be met without compromising the ability of future generations to meet their own needs.

f) **Principle of intra-generational equity**: This emphasizes that groups of people within a country have the right to benefit equally from the exploitation of resources and that they also have equal right to a clean and healthy environment. This is predicated on s.20 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to the effect that'The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria'; and Article 24 of the African Charter on Human and Peoples Rights to the effect that 'All peoples shall have the right to a general satisfactory environment favourable to their development'.

g) **Participation principle**: This requires that as much as possible, decisions should be made by community representative chosen by the authorities closest to them.

h) **Environmental Offsetting principle**: This stipulates the general obligation to protect endangered species and the natural system important to the sustenance of

[30]TO Okenabirhie, *Polluter pays principle in the Nigerian oil and gas industry: rhetoric or reality?* accessed May 8, 2015 fromhttp://www.legalserviceindia.com/article/l54-Interpretation-of-Polluter-Pays-Principle.html, and http://www.dundee.ac.uk

life. The cost for offsetting must be borne by project proponents to restore as nearly as feasible the lost environmental services to the community.

i) **User pays principle**: This states that the cost of a resource to a user must include all environmental costs associated with the extraction, transformation and use of the resources.

1.1.11 **Uses of Environmental Impact Assessment**:

Conducting an environmental impact assessment of projects is useful for various reasons, including the following:

1. **Tool for predictive and preventive effects**: A tool for forecasting future or foreseeable effects likely to result during or after the execution of a given project, EIA aids the authorities involved to determine which project, investment or program to be continued or discontinued. This step is aimed at supporting and encouraging efficient use of natural resources in both the short and long terms.

2. **Tool for measuring environmental risks**: A good EIA gives indication of the level of risk associated with a given environment relative to a proposed project. For example if the risk factors are high, 'no action' recommendation will be made concerning the project. This means that the project execution will portend more dangers than it would be of benefit to the community and their environment. The risks associated with the project are considered on the basis of its potential hazard, which could be physical or biological.

3. **Tool for Health impact assessment**: Based on existing knowledge, the EIA process does not only consider the chemical and biological potential effects of an activity to the environment. It also considers the health implications of such project/activity on humans and their neighbours. The main objective of a health impact assessment is to

develop evidence-based recommendations that inform decision-making to protect and improve community health and well-being.[31]

4. **Tool for socio-economic impact assessment**: In this regard, an EIA is carried out to examine the performance of the economic life or well-being of the society should the project be executed. Thus, where the consequences of the proposed project are outlined, monitored and managed, it will no doubt aid the government in its initiatives for intervention through its policy programmes.

5. **Tool for Incorporating Environmental Considerations into Policies and Programmes of Government**: The EIA of a project is done sometimes with a view to aid the government in making policies on the environment. In the Constitution, environment issues are listed under the concurrent legislative list. This means that the Federal, States and Local Governments can legislate on environmental issues. In order to get a result-oriented analytical conclusion on the nature and quality of the environment, an EIA of the location or project site is conducted. This in the long run encourages individuals to make submissions to the government to include in its policies environmental considerations aimed at sustainable use and development of the projects.

1.1.12**Types of Environmental Impact Assessment**:

1) **Project-Specific Environmental Impact Assessment**: This is conducted for specific projects that require comprehensive or detailed designs and which are likely to have serious adverse effects on the environment. Carrying out this type of EIA helps to check and avoid approval for projects that would not achieve the sustainable target if allowed to continue.

[31]GC Ofunne, *ibid*.

2) **Sectorial Environmental Impact Assessment**: This analysis the effect of a project in relation to a particular sector of the economy. It complements the project-specific EIA by forecasting into the long term effect of the project with respect to national development planning. Example is the broad assessment of the industrial sector in order to help policy makers to develop environmentally sound approach to investment, selection, design and implementation.[32]

3) **Regional Environmental Impact Assessment**: This is applicable to comprehensive projects and aimed at development of policy programmes that tackle challenges associated with the environment of a particular region. Regional assessment focuses on environmental challenges of a region that contributes to strategic development planning.[33] For example, an assessment of the environmental challenges of oil exploration in the Niger Delta Region identifies environmental impact associated with comprehensive project of mineral exploration and extraction.

1.2 **Definition of Terms**: There is strictly no exhaustive meaning or generally accepted definition of any concept. The purpose of definition is to clarify concepts. Thus, to define means to explain or state the exact meaning of words and phrases; to state explicitly; to limit; to determine essential qualities of; to determine the precise significance of; to settle; to prescribe authoritatively; to make clear.[34] Accordingly, definition of terms is usually aimed at setting limits to the meaning of a particular concept or word in the view or perception of a writer. Thus, any definition proffered in this research serves as a guide in setting limits to the researcher's view on the particular concept defined.

1.2.1 **Law**: There is no generally accepted definition of the concept law. However, in an authoritative view, law may be defined as a rule of control or guide for an action. In its

[32]GC Ofunne, *ibid*.
[33]GC Ofunne, *ibid*.
[34] H.C. Black, *Black's Law Dictionary, 5th edn*(United States of America: St. Paul Minn. West Publishing Co., 1979) p. 380.

generic sense, law is a body of rules of actions or conduct prescribed by controlling authority, and having binding legal force.[35] For our purpose, law is relative to the various enactments, both locally and internationally which seek to guide the conduct of individuals (natural or corporate) with respect to environmental impact assessment of any project which tend to adversely affect or impact the environment. Distinct from morals, for any law to serve the purpose for which it is enacted; it must be or be seen to be effective, with regards to compliance. Thus, it must become an integral part of the people for which it is made and where necessary to be backed by sanctions to ensure compliance or serve as deterrence to prospective law breakers.

1.2.2 **Regulation**: For our purpose, regulations are the various principles or orders prescribed by the various governmental departments to carry out the intent of the law.[36] Regulation therefore fixes or establishes control on the method to use in keeping with a particular law. Any prescription issued by any government agency, for example the National Environmental Standards and Regulations Enforcement Agency or the National Oil Spill Detection and Response Agency in keeping with the Environmental Impact Assessment Act is a regulation to guide the activities or projects carried out on the environment in Nigeria. It thus ensures uniform application of a particular law. One distinction between regulation and enacted law is that whilst regulation is the creation of an agency, law is enacted by the legislature. Strictly, regulations are not laws per se, but in practice, they do have an important effect of law in determining penalty and sanctions as provided in enacted laws.

1.2.3 **Environment:** Literally, environment has the root word 'environ'. Even environ has a prefix 'en' which means to put or go into, or cover with, otherwise entomb, encamp, enfold, etc.[37] Environ means the same thing as 'surround'. Its origin is from French

[35] *Ibid*p. 795.
[36] *Ibid*p. 1156
[37] Encarta Dictionaries, 1993-2008 Microsoft Corporation, 2009

'*environer*' – meaning 'make a circle around',v*iron* - meaning 'circle'.[38] Accordingly, environment is given by the Encarta dictionary as surrounding influences: all the external factors influencing the life and activities of people, plants and animals; the natural world, especially when it is regarded as being at risk from the harmful influences of human activities. It is the complex of physical, chemical and biotic factors that act upon an organism or an ecological community and ultimately determines its form and survival.[39]

Environment is the totality of physical, economic, cultural, aesthetic and social circumstances and factors which surrounds and affects the desirability and value of property and which also affects the quality of peoples' lives.[40] Environment may be seen as the condition, circumstances, etc affecting peoples' lives.[41] It is also said to mean the surroundings, especially the material and spiritual influences which affect the growth, development and existence of a living being.[42] In this sense, environment is the totality of the places and surroundings, in which we live, work and interact with other people in our cultural, religious, political and socioeconomic activities for self-fulfilment and advancement of our communities, societies or nations. It is within this environment that both natural and man-made things are found.[43]

Environment is therefore seen as the surroundings that all living things interact with, and which focuses on the natural vegetation, fish and wildlife, and also water, coasts, seas, air, and land, and the interrelationship whichexists among and between water, air, and land, and human beings, other lining creatures, plants, micro-organisms, and property as a complex relationship existing between the ecosystem and its

[38]*Ibid*
[39]Encyclopaedia Britannica, vol. 4.
[40]*Black's Law Dictionary* (6thedn) *opcit*, p. 543.
[41] Oxford Advanced Learners Dictionary of Current English.
[42]*The New Webster's Dictionary of the English Language* (International edn, Lexicon Publication, Inc., 1995) p. 316.
[43]AAkinbode, 'Introductory Environmental Resource Management'in SM Olokooba, *et al*, *Noise Pollution: A Major Catalyst to Climate Change and Human Health Catastrophe*<http://www.unilorin.edu.ng/publications/imami/work%20shop%20NOISE%20POLLUTION > accessed March 1, 2015.

inhabitants.[44] It is further considered as the complex ecological system in which human beings and non -living organisms co-exist. Environment in this perspective is classified into physical and cultural categories. The physical is the natural and consists of the biosphere[45], atmosphere,[46] hydrosphere,[47] and lithosphere[48] and their inherent resources and factors. Composed of land mass, continents, and islands, the lithosphere is the solid, rocky crust covering entire planet. This crust is inorganic and is composed of minerals. The hydrosphere is composed of all of the water on or near the earth. This includes the oceans, rivers, lakes, ice, and even the moisture in the air. Biosphere is the body of air composed of all living organisms, namely: plants, animals, birds, trees, and one-celled organisms. The atmosphere is made of gases, but mainly oxygen and nitrogen. All four spheres can be and often are present in a single location. For example, a piece of soil will of course have mineral material from the lithosphere. Additionally, there will be elements of the hydrosphere present as moisture within the soil, the biosphere as insects and plants, and even the atmosphere as pockets of air between soil pieces.[49]

The cultural covers the way of life of a people in a particular location including religion and history of the humans and activities.[50] In the view of Oludayo, from whatever perspective the environment is defined, it is our source of sustenance that we depend upon. We look to it for food, fuel, medicines and materials. We look to it also for a realm of beauty and spiritual assistance.[51] Accordingly, the environment has also been

[44]Section 2, Belize Environmental Impact Assessment (Amendment) Regulations, 2007.
[45]Derived from the Greek word '*bios*' meaning life.
[46]Derived from the Greek word '*atmo*' meaning air.
[47]Derived from the Greek word '*hydro*' meaning water.
[48]Derived from the Greek word '*litho*' meaning stone.
[49] Anon, <http://geography.about.com/od/physicalgeography/a/fourspheres.htm> accessed March 7, 2015.
[50] JG Rau and DC Wooten (eds),*Environmental Impact Analysis Handbook* (New York: Mc -Graw Hill Publishers, 1980) quoted in AG Oludayo,*Environmental Law and Practice in Nigeria* (Lagos: University of Lagos Press, 2004) p. 3.
[51] K Anan, Secretary-General, United Nations Opening Statement at the World Summit on Sustainable Development See A/ CONF /99 /20 at 154 quoted in AG Oludayo, *ibid*.

defined as 'surrounding air, water (both ground and surface), land, flora, fauna, humans and their interrelations'.[52]

Viewing the environment as an element of national security, Fagbohun[53]states that such security does not involve military elements but environmental issues which threaten the national security of a nation in any matter. Accordingly, such issues as climate change, deforestation and loss of biodiversity have been found to be capable of threatening a nation's security. In similar vein, resource problems[54] and environmentally threatening outcomes of warfare[55] are issues that can seriously undermine the security of a nation.

In this researcher's view, the first consideration or definition of the environment can be deduced from the account in the Holy Bible. The environment is viewed as the combination of heaven and earth with their various components namely, waters, firmament, dry land, seas, grass, herb yielding seed, fruit tree, sun, moon, stars, whales and every living creature, winged fowl, cattle and creeping thing and beast of the earth, man, fish and activities that replenish existents.[56] In this light and other definitions above, we submit that the environment is the totality of existents and all the activities therein, which may either develop, or under-develop it; or protect or destroy it.

Central to the understanding of environment are land, water, air and wildlife with all the factors and influences which affect the existence and development of living beings- higher or lower organisms. It is in this sense that the Nigerian Grundnorm

[52]Implementing Rules and Regulations (IRR) for the Philippines Environmental Impact Statement (EIS) System, DENR Administrative Order No. 2003-30, s. 3 (c).
[53]Fagbohun, Olanrewajuis a research professor with the Nigerian Institute of Advanced Legal Studies.
[54] Examples of resource problems are conflicts arising due to dispute over water scarcity or natural resources control, e.g. increase in population and dwindling availability of farmland because of developmental projects of public interest; and crisis in Nigeria's Niger Delta arising from agitation for a stake in the control of the oil wealth and environmental degradation due to oil spill and gas flaring. See O Fagbohun, *Environmental degradation and Nigeria's National Security: Making connections*, accessed February 29, 2016 from<http://nials-nigeria.org/pub/OlanrewajuFagbohun>
[55] Example is Saddam Hussein's burning of oil wells in the Gulf War. See Fagbohun, *ibid*.
[56] Genesis 1: 1 – 27.

captures the environment thus:'The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria'.[57]

Therefore, Environment includes water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them.[58] Similarly, by the provisions of the Environmental Impact Assessment Act,[59] 'environment' means the components of the Earth, and includes-

(a) land, water and air, including all layers of the atmosphere,

(b) all organic and inorganic matter and living organisms, and

(c) the interacting natural systems that include components referred to in paragraphs (a) and (b);

Wildlife means and includes wild animals living in a wild land. Thus, animals of an untameable disposition or state of nature, living in a land in a state of nature, as distinguished from improved or cultivated land.[60]Wild animals are so referred because they exist without man's interference in the bush or forests. In other words, animals that live in the bush, amidst plants propagated and growing without man's intervention are usually uncontrolled by man.[61]Without these wild-lives, the environment is not complete.

Land in the general sense comprehends any ground, soil, or earth whatsoever including fields, meadows, pastures, moors, water, marshes and rock. Land also comprehends legal or equitable interests or ownership of things of permanent nature hence; it may be interchangeably used with property.[62] Put differently, land means the solid surface of the earth where it is not covered with water.[63]

[57] Constitution of the Federal Republic of Nigeria, 1999 (as amended)s. 20.
[58]NESREA Act, 2007s. 37.
[59]Environmental Impact Assessment Act, Cap E 12, LFN 2004,s. 63(1).
[60] Black's Law Dictionary(6th edn)p. 1598.
[61]Webster's Dictionary, p. 1124.
[62] Black's Law Dictionary, *opcit*, pp. 876 – 878.
[63]Webster's Dictionary, *opcit*, p. 553

On the other hand, air means the atmosphere, the mixture of gases surrounding the earth which all people and land animals breathe. It also refers to the space above us.[64] Water is defined as the transparent, colourless liquid, H2O[65] which falls from the sky as rain, issues from the ground in springs and composed of three-quarters of the earth surface in the form of seas, rivers, lakes, etc. Water is also given as designating a commodity or a subject of ownership...such as rivers, lake, or ocean.[66] Common to land and water from the above definitions are issues of interest and subject of ownership.

1.2.4 **Natural Environment**: Primarily, the natural environment presupposes the environment in its unhampered state, or the environment as it was in the beginning of creation. In the wordings of the Holy Bible:[67]

> In the beginning God created the heavens and the earth… Then God said, "Let the waters under the heavens be gathered together into one place, and let the dry land appear" and it was so. And God called the dry land Earth, and the gathering together of the waters He called Seas. And God saw that it was good. Then God said, "Let the earth bring forth grass, the herb that yields seed, and the fruit tree that yields fruit according to its kind, whose seed is in itself, on the earth"; and it was so. And the earth brought forth grass, the herb that yields seed according to its kind, and the tree that yields fruit, whose seed is in itself according to its kind. And God saw that it was good.

Similarly, Prophet Isaiah recorded in the Holy Bible as follows:

> The wolf also shall dwell with the lamb, The leopard shall lie down with the young goat, The calf and the young lion and the fatling together; And a little child shall lead them. The cow and the bear shall graze; Their young ones shall lie down together; And the lion shall eat straw like the ox. The nursing child shall play by the cobra's hole, And the weaned child shall put his hand in the viper's den. They shall not hurt nor destroy…[68]

From the foregoing it is clear that the environment in its natural state had its cultural and aesthetic values preserved. This point was elucidated by Omaka as follows:

> In our natural habitat, a lot of creatures and crops of diverse flavours surround us: the oil palm, the cocoa trees, melina trees, iroko, guava, oranges and beautiful grape trees. There is also the olive, the pomegranate, trellised and untrellised date palms, from the fruit of the palm and the vine, we get wholesome drink and food. The spider carefully knit their network of webs on trees. The bees meticulously build its cell on hills and on trees. The weaverbird does its art unperturbed by any

[64] Webster's Dictionary, *ibid* p. 17.
[65] This is the chemist way of writing that water is the combination of hydrogen and oxygen.
[66] Black's Law Dictionary, *opcit*, p. 1591.
[67] See Genesis chapter 1 verses 1, 9 – 12, New King James Version.
[68] Isaiah Chapter 11 verses 6 – 9.

> other creature. Our huts, tents, and houses give us shelter, while the moon and the stars smile at us in the night. All these and every other that surround man form what is called the "ENVIRONMENT" in its natural state.[69]

Furthermore, the environment in its natural state also presupposes the cool breeze enjoyed from trees, shrubs, grasses and forests. This is typical of a place free from human overpopulation and unchecked location of industries and urbanization. Strictly, the essence of enacting laws for environmental impact assessment is not only to ensure standards in the execution of projects. Rather, the foundational basis is the sustainability of the earth and its resources. To achieve this objective, efforts must be made to protect the earth in its natural state. Accordingly, the laws encourage the citizenry to embrace acceptable methods in the use and exploitation of environmental resources.

1.2.5 **Impact**: This means strong or powerful effect which something has on another thing or somebody. Put simply, it is the strong effect which projects carried out on the environment has on the environment and its environs. The effect may be immediate or extant, imminent or futuristic as the case may be. For example the impact of pollution on the environment caused by several industrial activities cannot be over emphasized. It was for the various causes of pollution orchestrated by human activities, especially oil exploration by the multinational oil companies that Nigeria as part of the World Summits[70] on sustainable development came up with the National Oil Spill Contingency Plan of 2000 and other environmental legislation, including the birth of the National Oil Spill Detection and Response Agency Act.

1.2.6 **Environmental impact**: This means the strong effect had on the entire ecosystem and its inhabitants. In other words, it means environmental effect. The Environmental Impact

[69] CA Omaka, *The Nigerian Conservation Law*(Lagos: Lion Unique Concepts 2004), p.2.

[70] These include the various UN Conferences and Conventions which centred on the principles of recognising the importance of the environment, and interdependence of existents on it in order to ensure its sustainability. Examples are: Stockholm Declaration, 1972; Rio Declaration, 1992; Kyoto Protocol, 1997; Johannesburg Summit, 2002, etc.

Assessment Act in its interpretation section enacts thus: "environmental effect means, in respect of a project-

(a) any change that the project may cause to the environment;
(b) any change the project may cause to the environment, whether any such change occurs within or outside Nigeria, and includes any effect of any such change on health and socio-economic conditions.

It is pertinent to emphasise that environmental effect does not know boundaries. Consequently, environmental impacts or effects are known to spill over beyond anticipated imagination. Even in the number of years, such effect usually outlives the, purpose, location and generations of the orchestrators. Among the causes of environmental impacts or effect are activities in the oil and gas industries, construction works and products of technology.

1.2.7 **Environmental Impact Assessment**: This has been defined as studies needed in identifying, predicting, evaluating, mitigating, and managing the environmental, and key social and economic impacts of development projects, undertakings, programmes, policies or activities, the report of which is presented in a written document called the Environmental Impact Assessment report.[71]Environmental impact assessment (EIA) involves a systematic process for identifying, predicting and evaluating potential impacts associated with a development project. The EIA process must therefore proffer mitigation measures to avoid, reduce or minimize the negative impacts on the environment, public health, and property and may also highlight the foreseeable positive impacts. The mitigation measures entail identifying possible alternative site, project, process design, including the possibility of not proceeding with the project.[72]

Environmental Impact Assessment (EIA) is not a one-off process which terminates in the production of a report on the effects of the project and related mitigation measures. It also deals with monitoring the construction and operational phases, and this

[71]Belize Environmental Impact Assessment (Amendment) Regulations, 2007s. 2.
[72] CO Nwokolo,'Evaluation of Environmental Impact Assessment System in Nigeria' (2013)ISSN: 2354-2276, Vol. 2 (1)*Greener Journal of Environmental Management and Public Safety*, 022 – 031.

continues till the project is decommissioned. The post-closure care is also an integral part of the EIA process.[73]

1.2.8 **Environmental Impact Assessment Process**: Defined as a systematic process for identifying, predicting and evaluating potential impacts associated with a development project, the EIA process tries to proffer mitigation measures in order to avoid, reduce or minimize the negative impacts of certain projects on the environment, including public health and property. The EIA identifies problem areas and outlines alternatives as well as mitigating approach to potential problems either before construction, during construction, operation or decommissioning phases of the development.[74]

1.2.9 **Major**: Literally, this means very significant or greater in importance than most others.[75]Major may also be defined as an action that requires substantial planning, time, resources or expenditure.[76]For the purpose of this research, major is viewed in terms of the laws and institution considered in this study with respect to environmental impacts assessment laws in Nigeria.

1.2.10 **Analysis**: This implies the act of separating or streamlining an object or concept into several components, structural or constituent parts for the purpose of close examination in order to better understand the object or concept being considered. Accordingly, this research is aimed at unraveling the constituent parts of the major laws regulating environmental impacts and institutions in Nigeria for a better appreciation of the said laws and to ascertain whether or not there is substantial compliance thereof.

1.2.11 **Institutions**: These for the purpose of this study mean the agencies of government saddled with regulation of and giving effect to environmental impacts laws. However, the

[73]*Ibid* .
[74] National Open University Course Guide on Environmental Impact Assessment and Auditing, ESM 342 accessed from www.nou.edu.ng on January 20, 2016.
[75]Encarta Dictionaries, *op.cit*
[76]Natural Resources Defence Council v Grant, 341 F. Supp, 356, 366 – 357 (EDNC) 1972 quoted in L Atsegbua, V Apkotaire and FDimowo, *Environmental Law in Nigeria: Theory and Practice* (Lagos: Ababa Press Ltd., 2003) p. 171

research is limited to the choice of such agencies as: National Environmental Standards and Regulations Enforcement Agency, National Oil Spill Detection and Response Agency mainly and loosely, Department of Petroleum Resources and the Federal Ministry of Environment.

1.3 **Classification of Assessment**:

The usefulness of assessment in the execution of projects capable of potential impacts on the environment encompasses the environmental impact assessment process. It is synonymous with the main objective of environmental impact assessment. Accordingly, it ensures that potential environmental impacts are foreseen at the appropriate stage of project design in order to address same before taking any decision on the project. Environmental impact assessmentmay be carried out based on the following categorisation, namely:

a) **Impact Assessment based on the type of project**: This type of assessment classification has been fully considered under the three broad categories in the Environmental Impact Assessment Act. For example, based on the type of project embarked upon, environmental impact assessment is mandatorily required for projects under all the three categories considered above.

b) **Impact Assessment (based on Ecology)**: On this point, the basic consideration is on the effect or impact of the projects on the interrelationship of organisms and the environment. For example, a project which has the potential of altering the interrelationships enjoyed by organisms in their immediate or extended environment must be assessed, in order to ameliorate any negative impacts of such venture. It would appear that virtually every project is capable of affecting the ecosystem if its effects are not checked properly.However, projects with potency of polluting the environment whether on land, water or the atmosphere are considered first before others in carrying out such impact assessment. Examples include any project

involving the use of machinery, motor vehicles, petroleum products, chemical compounds, digging or excavation of the soil, dredging, landfills, heating, recycling, and waste disposal.

c) **On-shore Impact Assessment**: This relates to assessment of the environmental impact of projects located generally on dry land, as distinct from water or wetlands. Accordingly, all projects based on the three broad categorisations aforesaid are deemed to fall under the on-shore impact assessment categorisation.

d) **Off-shore Impact Assessment**: This categorisation relates to environmental impact assessment of projects sited on or within water generally. For example, discovering crude oil in the river or ocean requires that before drilling of the oil commences, appropriate assessment must be carried out. This is particularly so as there may be incidents of crude oil and petroleum products spilling into the river. Consequently, such spill would definitely affect the water life and its effect will cut across territories of neighbouring states, countries and beyond. Accordingly, any project under any of the three broad categories which is planned to be sited on water requires the off-shore impact assessment. Examples include projects requiring hydropower, power generation projects, land reclamation, petroleum drilling, etc.

e) **Atmospheric Impact Assessment**: This categorisation relates to assessment of projects capable of impacting the atmosphere. Generally, execution of projects with the use of machinery which emits carbon monoxide (hazardous fumes) into the air requires mandatory assessment. Similarly, any project the end product of which is capable of polluting the surrounding air of the environment either directly or indirectly requires assessment under this head.Examples include transport facility manufacturing/production projects: aircraft, vehicles and locomotives generally, generating plants, etc.

CHAPTER TWO:

LEGAL AND INSTITUTIONAL FRAMEWORKS FOR ENVIRONMENTAL IMPACT ASSESSMENT

2.1 Legal Framework and Overview of Statutes on the Environment:

Generally, legislation serves as an effective instrument for environmental protection, planning, pollution, prevention and control. Undoubtedly, the Laws and Regulations on the Environment in Nigeria are legion.[77] Apart from a general appreciation of the various enabling laws on the protection of the environment generally an the environmental impact assessment in particular, a more detailed overview was considered of Environmental Impact Assessment Act; National Environmental Standards and Regulations Enforcement Agency Act, and National Oil Spill Detection and Response Agency Act in this study.

Historically, the issue of protection and development of the environment in Nigeria was relegated to the background and thus received lackadaisical attention during and long after the era of colonialism. There was no particular law which dealt decisively on environmental issues. At the time, environmental matters were often seen and treated under the traditional common law tort of nuisance.[78] Consequently, it was always difficult and a herculean task to seek redress in private nuisance.[79]

Among the earliest legal instruments that prohibited water and air pollution and created the offence of trespass and nuisance were the Waterworks Act of 1915 and the Criminal Code Act of 1916.[80] In 1917, the Public Health Act was proclaimed and it

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[77] We acknowledge the website http://www.elri-ng.org/newsandrelease2.html, which was partly insightful in this compilation.

[78] PB Ajibola, 'Protection of the environment through law' in F Shyllon (ed), *The Law and Environment in Nigeria* (Ibadan: University Press, 1989) p. 7.

[79] This is predicated on the rule that only the Attorney–General can institute an action for nuisance in the interest of the public. For an individual to seek redress and claim damages, he must prove that the damage suffered by him was over and above that suffered by the ordinary members of the public.

[80] *Imparimateria* with the Criminal Code Act, Cap C 38, LFN 2004; Ss. 245, 247 and 248 of the Criminal Code. Particularly S. 247 provides: 'Any person who- (a) vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way; or (b) does any act which is, and which he knows or has reason to believe

prohibited the fouling of water and the introduction of any vitiating thing into the atmosphere[81]. Notably, the Public Health Act did not go beyond mere abatement of nuisance[82]. There were also the Carriage of Goods by Sea Act of 1926[83]; Quarantine Act[84]; and Hides and Skin Act.[85]

In the 1960s following Nigeria's attainment of independence status in 1960; preceded by the discovery of crude oil in commercial quantity in 1958, it was apparent that crude oil which is mainly exported by water had started polluting the Nigerian waters. Consequently, in order to criminalise water pollution caused by oil, the Oil in Navigable Waters Decree, 1968[86] was promulgated. This was also to give effect to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (as amended) to which Nigeria acceded to earlier that year[87]. Similarly, the Petroleum Act, 1969 was promulgated and it empowered the Minister of Petroleum Resources to make regulations for the prevention of pollution of water courses and the atmosphere.

Following the remarkable industrial growth associated with the oil boom,[88] the late 1950s, 1960s, 1970s and early 1980s witnessed more regulations respecting the environment. These include all the laws promulgated or enacted on environmental issues before the year 1987, namely: African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act[89]; Agricultural (Control of Importation) Act[90]; Animal Diseases (control) Act;[91] Associated Gas re-injection Act;[92] Bees (Impact

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to be, likely to spread the infection of any disease dangerous to life, whether human or animal; is guilty of a misdemeanour, and is liable to imprisonment for six months'.

[81] PB Ajibola, *opcit*, p. 42.

[82] SMA Belgore, 'The need for environmental protection law in Nigeria' in F Shyllon (ed) *The Law and Environment in Nigeria* (Ibadan: University Press, 1989) p. 4.

[83] Cap. C 2, Laws of the Federation of Nigeria (LFN), 2004.

[84] Enacted on 27/5/26, now Cap.Q1, LFN, 2004.

[85] Cap.H3, LFN 2004, enacted on 6/10/42.

[86] *Imparimateria* with the Oil in Navigable Waters Act, Cap. O 6 LFN,2004 .

[87] Ajibola, *loccit*.

[88] MT Ladan, *Cases and Materials on Environmental Law and Policy* (Nigeria: Econet Publishers, 2004) p. 2.

[89] Cap A 9, LFN 2004, ratified in 1980.

[90] Cap A 13, LFN 2004, enacted in 1964.

[91] Cap A 17, LFN 2004, promulgated in 1988.

Control and Management) Act;[93] Civil Aviation Act;[94] Customs and Excise Management (Disposal of Goods) Act;[95] Endangered Species (Control of International Trade and Traffic) Act;[96] Energy Commission of Nigeria Act;[97] Excise (Control of Distillation) Act;[98] Exclusive Economic Zones Act;[99] Explosives Act;[100] Factories Act;[101] Hydrocarbon Oil Refineries Act;[102]Land Use Act;[103] Mines and Quarries (Control of Buildings, Etc.) Act;[104] Nigerian Atomic Energy Commission Act;[105] Nigerian Mining Corporation Act;[106] Nigerian Shippers' Council Act;[107] Nigerian Steel Development Authority Act;[108] Oil in Navigable Waters Act;[109] Oil Pipelines Act;[110] Oil Terminal Dues Act;[111] Pest Control of Production (Special Powers) Act;[112] Petroleum Act;[113] Petroleum Products and Distribution (Anti-Sabotage) Act;[114] River Basins Development Authority Act;[115] Standards Organisation of Nigeria Act;[116] Territorial Waters Act;[117] Water Resources Act,[118] etc.

It was worrisome that despite the ubiquity or extensiveness of the above laws, the lacuna on environmental protection still existed and lingered. Most of the promulgated laws addressed only infinitesimal aspects of the environment. In most

[92] Cap A 25, LFN 2004, enacted in 1979.
[93]Cap B 6, LFN 2004, promulgated in 1970.
[94]Cap C 13, LFN 2004, enacted in 1965.
[95] Cap. C 46 LFN 2004, promulgated in 1970.
[96]Cap E 9, LFN 2004, promulgated in 1985.
[97]Cap. E 10, LFN 2004, enacted in 1979.
[98]Cap. E 16, LFN 2004, enacted in 1964.
[99]Cap E 17, LFN 2004, promulgated in 1978.
[100] Cap. E 18, LFN 2004, enacted in 1964 and its Regulations in 1967.
[101] Cap. F 1, LFN 2004, promulgated in 1987.
[102]Cap H 5, LFN 2004, enacted in 1965.
[103] Cap L 5, LFN 2004, promulgated in 1978.
[104]Cap. M 13, LFN 2004, promulgated in 1970.
[105]Cap. N 91, LFN 2004, promulgated in 1976.
[106]Cap N 120, LFN 2004, promulgated in 1972.
[107]Cap. N 133, LFN 2004, promulgated in 1977.
[108]Cap. N 134, LFN 2004, promulgated in 1971.
[109] Cap O 6, LFN 2004, promulgated in 1968.
[110] Cap O 7, LFN 2004, enacted in 1958.
[111] Cap. O 8, LFN 2004, enacted in 1965.
[112]Cap P 9, LFN 2004, promulgated in 1968.
[113] Cap P 10, LFN 2004, promulgated in 1969.
[114]Cap P 12, LFN 2004, promulgated in 1975.
[115]Cap R 9, LFN 2004, promulgated in 1986.
[116]Cap. S 9, LFN 2004, promulgated in 1970.
[117] Cap T 5, LFN 2004, promulgated in 1967.
[118]Cap W 2, LFN 2004, promulgated in 1993.

cases, no particular institutional framework or Agency was established to pilot the effective administration of the laws. Consequently, the laws merely existed in theory, but practically, they were far from being enforced, and achieving environmental protection objective. Consequently, the attitudinal approach to environmental issues was more often than not non-methodical and certainly lacking in vitality and purpose.[119] This state of affairs continued[120] until circumstance reawakened Nigeria's slumber in 1987.

In 1987, the dumping of toxic waste in Koko[121] village in the now Delta State[122], by an Italian company brought to the fore Nigeria's primordial consciousness to environmental protection. The incident caused widespread skin diseases and inflammation; drought and shortage of many crops varieties around the region. The disease outbreak was generally airborne. Consequently, in 1988, the Harmful Waste (Special Criminal Provisions) Decree, No. 42[123] was promulgated by the Military junta, headed by General Ibrahim BadamosiBabangida. This Decree facilitated the birth or rather establishment of the Federal Environmental Protection Agency (FEPA).[124] The FEPA became the lead Agency which was for the first time charged with the administration and protection of the environment of Nigeria. In 1999, FEPA and other relevant Departments in other Ministries were merged to form the Ministry of

[119]Ajibola, *art cit*, p. 6.

[120] It is here admitted that the 1972 Stockholm Conference on Human Environment which was attended by Nigeria ignited the consciousness of many governments of the world on the need to evolve a holistic rather than sectorial approach to environmental protection. Other efforts and regional initiatives such as the Lagos Plan of Action of 1980 also reinforced this emerging consciousness for environmental protection. In 1981, a bill for the establishment of a Federal Environmental Protection Agency was placed before parliament. Meanwhile a small unit called Environmental Planning and Protection Division in the Federal Ministry of Works and Housing was handling environmental protection. But nothing happened to the bill until the Military take over on December 31, 1983, and pollution activities continued throughout most of the 80s. AAdegoke, *The Challenges of Environmental Enforcement in Africa: the Nigerian Experience*.<http://inece.org/3rdvol1/pdf/adegoro.pdf> accessed on January 30, 2016.

[121]Until the Koko incident and the promulgation of the FEPA Decree, there was no adequate legal response to the emerging grave problems of environmental abuse in Nigeria. The responses were limited to the various environmental Sanitation Edicts enacted by most States governments which did not go beyond the aesthetic aspect of the national land scape. See M Ikhariale, 'The Koko incident, the Environment and the Law' in F Shyllon, (ed) *The Law and Environment in Nigeria*(Ibadan: University Press,1989) p. 75.

[122]Formerly part of old Bendel State, which today is Edo State.

[123]Now Harmful Waste (Special Criminal Provisions) Act, Cap H1, LFN 2004.

[124] Created by the now repealed FEPA Act, Decree No. 58 of 1988, Cap F 10, LFN 2004.

Environment, but without an appropriate enabling law on enforcement issues. This situation created a vacuum in the effective enforcement of environmental laws, standards and regulations in the country.[125]

For the reason of not having the machinery of enforcement, there was a need to either amend the FEPA Act or create a new Agency which will be statutorily empowered to enforce the regulations. Thus, in line with the Constitution of the Federal Republic of Nigeria (as amended),[126] the NESREA[127] was established in 2007 as a parastatal of the Federal Ministry of Environment, Housing and Urban Development; with the appointment of its pioneer Director-General/ Chief Executive Officer, Dr. Mrs Ngeri S. Benebo.[128] Accordingly, the NESREA Act has repealed the FEPA Act.[129] Today, NESREA is the enforcement Agency for environmental standards, regulations, rules, laws, policies and guidelines.[130]

Commendably, since the promulgation of the FEPA Act, which was later collapsed into the NESREA Act, plethora of other legal instruments on the protection of the Nigerian environment has continued to emerge. The examples include: Environmental Impact Assessment Act;[131] Fertilizer (Control) Act;[132]Inland Fisheries Act;[133]International Convention for The Prevention of Pollution from Ships, 1973 and Protocol (Ratification and Enforcement) Act;[134] International Convention on Civil

[125] Retrieved January 30, 2016 from http://www.nesrea.org=faq.html
[126]Section 20of the said Constitution provides: 'The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria'.
[127]Signed into law by late President Umaru Musa Yar'Adua, GCFR, the NESREA Act is published in the Federal Republic of Nigeria Official Gazette No. 92, Vol. 94 of 31st July, 2007.
[128]Before her appointment, effective December, 2006, Dr.Benebo was a Director in the Pollution Control and Environmental Health Department of the Federal Ministry of Environment, Abuja.At present, the Director-General/Chief Executive Officer is Dr Lawrence ChidiAnukam who assumed office on 17th February 2015. Until his assumption of office, Dr. Anukamwas the most senior Director in the Agency and was in charge of Planning and Policy Analysis.
[129]NESREA Act, 2007 s. 36.
[130]NESREA Act, 2007 s. 1(2).
[131] Cap E 12, LFN 2004, promulgated in 1992.
[132]Cap. F 25, LFN 2004, promulgated in 1992.
[133]Cap I 10, LFN 2004, promulgated in 1992.
[134]Ratified in 2007.

Liability for Oil Pollution Damage (Ratification and Enforcement) Act;[135] International Convention on The Establishment of An International Fund for Compensation for Oil Pollution Damage 1971 as Amended (Ratification) Act;[136] National Agency for Food and Drug Administration and Control Act;[137] National Drug Law Enforcement Agency Act;[138] National Oil Spill Detection and Response Agency (Establishment) Act;[139] National Steel Raw Materials Exploration Agency Act;[140] Niger-Delta Development Commission (NDDC) Act;[141] Nigeria Extractive Industries Transparency Initiative (NEITI) Act;[142] Nigeria Hydrological Services Agency (Establishment) Act;[143] Nigerian Airspace Management Agency (Establishment, Etc) Act;[144] Nigerian Civil Aviation Authority (Establishment, Etc) Act;[145] Nigerian Communication Commission Act;[146] Nigerian Export Processing Zones Act;[147] Nigerian Maritime Administration and Safety Agency Act;[148] Nigerian Minerals and Mining Act;[149] Nigerian National Petroleum Corporation (Projects) Act;[150] Nigerian Oil and Gas Industry Development Content Act;[151]Nigerian Urban and Regional Planning Act;[152]Nuclear Safety and Radiation Protection Act;[153] Oil and Gas Export Free Zone Act;[154] Sea Fisheries Act;[155] The international Convention for The Safety of Life at Sea (Ratification and Enforcement)

[135]Ratified in 2006.
[136]Ratified in 2006.
[137]Cap. N 1, LFN 2004, promulgated in 1992.
[138]Cap. N 30, LFN 2004, promulgated in 1989.
[139]Enacted in 2006.
[140]Cap. N 77, LFN 2004, promulgated in 1992.
[141]Cap N 86, LFN 2004, enacted in 2000.
[142]Enacted in 2007.
[143]Enacted in 2010.
[144]Cap. N 90, LFN 2004, enacted in 1999.
[145]Cap. N 94, LFN 2004, enacted in 1999.
[146]Cap N 97, LFN 2004, Enacted in 2003.
[147]Cap. N 107, LFN 2004, promulgated in 1992.
[148]Enacted in 2007.
[149]Enacted in 2007.
[150]Cap. N 124, LFN 2004, promulgated in 1993.
[151]Enacted in 2010.
[152]Cap N 138, LFN 2004, promulgated in 1992.
[153]Cap N 142, LFN 2004, promulgated in 1995.
[154]Cap. O 5 LFN, 2004, promulgated in 1996.
[155] Cap. S 4, LFN 2004, promulgated in 1992.

Act;[156] Treaty to Establish Rotterdam Convention on The Prior Informed Consent Procedure For Certain Hazardous Chemicals and Pesticides in International Trade (Ratification and Enforcement) Act;[157] United Nations Convention of Carriage of Goods by Sea (Ratification and Enforcement) Act;[158] Constitution of the Federal Republic of Nigeria, 1999 (as amended),[159] etc.

In light of the foregoing mentioned laws, a brief discourse on a general idea about some of the laws with direct nexus on environmental impacts, owing largely to their general purpose of the protection of Nigerian environment is necessary.

2.1.1 **Constitution of the Federal Republic of Nigeria, 1999 (as amended)**:[160] The Constitution is the grundnorm and national legal order, which recognizes the importance of improving and protecting the environment. It is an objective of the Nigerian State to improve and protect the air, land, water, forest and wildlife of Nigeria.[161] Similarly, the Constitution provides that international treaties which have been ratified by the National Assembly should be implemented as law in Nigeria.[162] These treaties by implication include the environmental treaties. Furthermore, in order to give full effect to fundamental rights to life and human dignity respectively,[163] as guaranteed by the Constitution, the rights must be linked to the need for a healthy and safe environment.

2.1.2 **Land Use Act**:[164] This enactment vests all land comprised in the territory of each State (except land vested in the Federal government or its agencies) solely in the Governor of the State, who holds such land in trust for the people and is responsible for allocation of land in all urban areas to individuals resident in the State and to organisations for residential, agriculture, commercial and other purposes while similar powers with

[156]Ratified in 2004.
[157]Ratified in 2005.
[158]Ratified in 2005.
[159]As amended in 2011, promulgated in 1999.
[160] As amended in 2011.
[161]Constitution of the Federal Republic of Nigeria, 1999 (as amended) s. 20.
[162]Constitution of the Federal Republic of Nigeria, 1999 (as amended) s.12.
[163]Constitution of the Federal Republic of Nigeria, 1999 (as amended) Ss. 33 and 34.
[164] Cap L 5, LFN 2004.

respect to non-urban areas are conferred on Local Governments.[165] By allowing for allocation of land in compliance with regional and urban planning rules, the Land Use Act is by extension protecting the environment.

2.1.3 **Harmful Waste (Special Criminal Provisions) Act**:[166] Except duly authorised legally, this law prohibits, the carrying, dumping or depositing of harmful waste in the air, land or waters of Nigeria. It provides for a punishment of life imprisonment for offenders as well as the forfeiture of land or anything used to commit the offence.[167] This is the only law which derails from the principle of corporate personality.[168] Thus, apart from the criminal liability which the Act imposes, the offender is also liable in civil proceedings to persons who have suffered injury as a result of his offending act.[169]

2.1.4 **Hydrocarbon Oil Refineries Act**:[170] This Act regulates the licensing and control of refining activities. Thus it prohibits any unlicensed refining of hydrocarbon oils in places other than a refinery and requires refineries to maintain pollution prevention facilities.[171]

2.1.5 **Associated Gas re-injection Act**:[172]This law is yet to become enforceable in Nigeria, because despite its enactment, gas flaring by oil companies has continued unabated in Nigeria. However, the fact that it exists is laudable. The Act was enacted to regulate gas flaring activities of oil and gas companies in Nigeria. Relevant to pollution prevention, it prohibits, without lawful permission, any oil and gas company from flaring gas in Nigeria.[173] Penalties for breach of permit conditions[174] and in respect of the offences created by section 3 of the Act include forfeiture of concessions and withholding of all or part of any entitlement by the Minister of Petroleum Resources.

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[165]Enactment section of the Land Use Act, 1978, Cap L 5, LFN 2004. See also S. 1.
[166]Cap H1, LFN 2004.
[167]Harmful Waste (Special Criminal Provisions) Act s. 6.
[168]Harmful Waste (Special Criminal Provisions) Act s. 7.
[169]Harmful Waste (Special Criminal Provisions) Act s. 12.
[170]Cap H 5, LFN 2004.
[171]Hydrocarbon Oil Refineries Act ss. 1 and 9.
[172] Cap A 25, LFN 2004.
[173]Associated Gas re-injection Act s. 3(1).
[174]Associated Gas re-injection Act s. 4.

2.1.6 **Endangered Species (Control of International Trade and Traffic) Act**:[175]

This focuses on the protection and management of Nigeria's wildlife and some of their species in danger of extinction as a result of over-exploitation. It prohibits without a valid licence, the hunting, capture or trade in animal species either presently or likely in danger of extinction.[176] The Act stipulates the liability of any offender[177] in form of option of fine for a first offender, while for a second and subsequent offence, liability is imprisonment for six months or one year without the option of a fine as the case may be. The court may order the forfeiture of any specimen which is the subject of prosecution under the Act. It also provides for regulations to be made necessary for environmental prevention and control as regards the purposes of the Act.[178]

2.1.7 **Sea Fisheries Act**:[179]This Act makes it illegal to take or harm fishes within Nigerian territorial waters by use of explosives, poisonous or noxious substances. Thus, any unlicensed operation of motor fishing boats within Nigerian waters is prohibited.[180] Liability for violation and consequent destruction of fishes is punishable with a fine of ₦50, 000 or an imprisonment term of 2 years.[181] Authorisation for the protection and conservation of sea fishes is also established by the Act.[182]

2.1.8 **Exclusive Economic Zone Act**:[183] This Act makes it illegal to explore or exploit natural resources within the areas that have been mapped as exclusive economic zone without lawful authority. The Federal Government regulates the activities of the said zone.

2.1.9 **Explosives Act**:[184] Providing for the control of explosives in order to maintain and secure public safety, this Act strictly regulates the importation, manufacture, storage,

[175]Cap E 9, LFN 2004.
[176]Endangered Species Act s. 1.
[177]Endangered Species Act s. 5.
[178]Endangered Species Act s. 7.
[179] Cap. S 4, LFN 2004.
[180]Sea Fisheries Act s. 1.
[181]Sea Fisheries Act s. 10.
[182]Sea Fisheries Act s. 14(2).
[183]Cap E 17, LFN 2004.

and possession of explosives.[185] However, in the face of present day challenges of victimisation by militancy, insurgency and kidnapping in Nigeria, there is a clamour to upgrade this Act because it is out-dated.[186]

2.1.10 **Oil Pipelines Act**:[187] This Act and its Regulations guide oil activities in Nigeria. It creates civil liability on the person who owns or is in charge of an oil pipeline, making him liable to pay compensation to anyone who suffers physical or economic injury as a result of a break or leak in his pipelines.[188] Thus, the grant of licenses is subject to regulations concerning public safety and prevention of land and water pollution.[189]

2.1.11 **Petroleum Act**:[190] Principally enacted to provide for the exploration of petroleum from the territorial waters and continental shelf of Nigeria, this Act vests the ownership of, and all on-shore and off-shore revenue from petroleum resources in the federal government. With its Regulations, this law apparently remains the primary legislation on oil and gas activities in Nigeria. It promotes public safety and environmental protection. For example, it provides for authority to make regulations on oil and gas operations for the prevention of air and water pollution.[191]

2.1.12 **Regulations under the Petroleum Act**:

1. **Petroleum (Drilling and Production) Regulations:** This places restrictions on licensees from using land within fifty yards of any building, dam, reservoir, public road, etc.[192] Establishing that reasonable measures be taken to prevent water

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[184] Cap. E 18, LFN 2004.
[185]Explosives Acts. 1(1)(2).
[186]J Ofikhenua, SSS, NSA call for amendment of Explosives Act. Accessed March 8, 2015 from<http://www.thenationonlineng.net/2011/index.php/news-update/16196-sss-nsa-call-for-amendment-of-explosives-act.html>;
<http://www.leadership.ng/nga/articles/14329/2012/01/25/security_challenges_need_upgrade_explosives_act.html>
[187] Cap O 7, LFN 2004.
[188]Oil Pipelines Act s. 11(5)
[189]Oil Pipelines Act s. 17(4)
[190] Cap P 10, LFN 2004
[191]Petroleum Act s. 9(1)(b)
[192]Petroleum (Drilling and Production) Regulationss. 17(1)(b)

pollution and to end it, if it occurs,[193] the Regulation also prohibits without lawful permission, the cutting down of trees in forest reserves.[194]

2. **Petroleum Refining Regulations**: This requires the Manager of a refinery to take measures to prevent and control pollution of the environment.[195]

3. **Mineral Oil Safety Regulations and Crude Oil Transportation and Shipment Regulations**:These Regulations prescribe precautions to be taken in the production, loading, transfer and storage of petroleum products to prevent environmental pollution.

2.1.13 **Petroleum Products and Distribution (Management Board) Act**:[196]Under this Act, conviction for the offence of sabotage which could result in environmental pollution is punishable with a death sentence or an imprisonment term not exceeding 21 years.

2.1.14 **Territorial Waters Act**:[197] This Act makes punishable any act or omission committed within Nigerian waters which would be an offence under any other existing law.

2.1.15 **Nuclear Safety and Radiation Protection Act**:[198] This Act focuses on the regulation of the use of radioactive substances and equipment emitting and generating ionizing radiation. The authority which makes regulations for the protection of the environment from the harmful effects of ionizing radiation[199] makes registration of premises and the restriction of ionizing radiation sources to those premises mandatory.[200] To ascertain registration, an inspector is allowed to verify records of activities that pertain to the environment.[201] It is also enacted that the same regulations guiding the transportation of

[193]Petroleum (Drilling and Production) Regulationss. 25
[194]Petroleum (Drilling and Production) Regulations ss. 23 and 27 read together
[195]Petroleum Refining Regulationss. 43(3)
[196]Cap P 12, LFN 2004.
[197] Cap T 5, LFN 2004.
[198]Cap N 142, LFN 2004.
[199]Nuclear Safety and Radiation Protection Act s. 4.
[200]Nuclear Safety and Radiation Protection Act ss. 15 and 16.
[201]Nuclear Safety and Radiation Protection Act s. 37(1)(b).

dangerous goods by air, land or water should also apply to the transportation of radioactive substances.[202]

2.1.16 **Nigerian Maritime Administration and Safety Agency Act**:[203] This is an Act to provide for the promotion of maritime safety and security, protection in the maritime environment, shipping registration and commercial shipping, maritime labour, the establishment of Nigerian Maritime Administration and Safety Agency; and for related matters. As part of its objective, application and scope, the institutional framework regulates and promotes maritime safety, security, marine pollution and maritime labour.[204]

2.1.17 **Nigerian Minerals and Mining Act**:[205] This Act repealed the Minerals and Mining Act, No. 34 of 1999 and re-enacted the Minerals and Mining Act, 2007 for the purpose of regulating all aspects of the exploration and exploitation of solid minerals in Nigeria and for related purposes.[206] Accordingly, it prohibits the exploration or exploitation of minerals in Nigeria without authority.[207] Further, it empowers the Minister to ensure the orderly and sustainable development of Nigeria's mineral resources and establish procedures and requirements applicable to mining operations.[208]

2.1.18 **Nigerian Mining Corporation Act**:[209] This Act establishes the Nigerian Mining Corporation. The mining corporation has authority to engage in mining and refining activities and to construct and maintain roads, dams, reservoirs, etc. Particularly, the Act

[202]Nuclear Safety and Radiation Protection Act s. 40.
[203]Enacted in 2007.
[204]Nigerian Maritime Administration and Safety Agency Act s. 1.
[205]Enacted in 2007.
[206]Nigerian Minerals and Mining Act enactment section.
[207]Nigerian Minerals and Mining Act s. 2.
[208]Nigerian Minerals and Mining Act s. 4.
[209]Cap N 120, LFN 2004.

creates civil liability on the corporation for the physical or economic damage suffered by any person as a result of its activities.[210]

2.1.19 **Quarantine Act**:[211] The Quarantine Act provides authority to make regulations for preventing the introduction, spread and transmission of infectious diseases such as cholera, yellow fever, typhus, etc.

2.1.20 **River Basins Development Authority Act**:[212] This Act establishes the River Basins Development Authority, which is concerned with the development of water resources for domestic, industrial and other uses, and the control of floods and erosion.

2.1.21 **Pest Control of Production (special powers) Act**:[213] Concerned with export produce conditions and pest control, this Act provides authorisation for inspection in order to take emergency measures to control pest infestation of produce.[214]

2.1.22 **Agricultural (Control of Importation) Act**:[215] With its Plant (Control of Importation) Regulations, this Act is concerned with the control of the spread of plant diseases and pests. It allows authorized officers to take emergency control measures, and provides for the recovery of costs and expenses incurred by the officers in controlling the situation.[216]

2.1.23 **Bees (Impact Control and Management) Act**:[217]Under this Act, it is an offence, to import bees or agricultural materials into Nigeria without a valid permit. A person could also be held liable for exceeding the limits or terms of his permit.

2.1.24 **Animal Diseases (control) Act**:[218]This Act makes it an offence to import any animal, hatching egg or poultry into Nigerian except under a permit. Under the Act an inspector

[210]Nigerian Mining Corporation Act s. 16.
[211]Cap.Q1, LFN, 2004.
[212]Cap R 9, LFN 2004.
[213]Cap P 9, LFN 2004.
[214]Pest Control of Production (Special Powers) Act s. 1.
[215]Cap A 13, LFN 2004.
[216]Agricultural (Control of Importation) Act s. 6.
[217]Cap B 6, LFN 2004.
[218]Cap A 17, LFN 2004.

is authorised to take emergency measures where necessary.[219] While stipulating penalties for contravention,[220] it also requires owners of trade animals to possess a movement permit and ensure the fitness of their animals.[221] Authority to make regulations that prevent and control the spread of animal diseases[222] is also provided.

2.1.25 **Civil Aviation Act**:[223]This Act promotes public safety by providing regulations to secure the safety of persons and property in the aircraft and others who may be endangered by it. The Act is one of the applicable laws which recognise and provide for the payment of compensation to victims of air accidents, including third parties who were not passengers but who were affected by an air crash or airplane mishap. The Act creates a right of action in favour of a third party or person entitled to claim on his behalf for the injury or death arising from an air accident or the use or operation of an aircraft. Accordingly, all persons who incur losses as a consequence of air crash are entitled to damages, payable by the Airline owners or Management. Their right to such compensatory damages is covered by the Act.[224]

2.1.26 **Factories Act**:[225]This Act promotes the safety of workers and professionals exposed to occupational hazards. Under this Act, it is an offence to use unregistered premises for factory purposes. A factory inspector is allowed to take emergency measures or request that emergency measures be taken by a person qualified to do so in cases of pollution or any nuisance.[226]

[219]Animal Diseases (control) Acts. 5.
[220]Animal Diseases (control) Act s. 10.
[221]Animal Diseases (control) Act s. 13.
[222]Animal Diseases (control) Act s. 20.
[223]Cap C 13, LFN 2004.
[224]Civil Aviation Act, 2006 s. 49(2).
[225] Cap. F 1, LFN 2004.
[226]Factories Acts. 13.

2.1.27 **Water Resources Act**:[227]This Act aims at developing and improving the quantity and quality of water resources. It provides for pollution prevention plans and regulations for the protection of fisheries, flora and fauna.[228]

2.1.28 **Hides and Skins Act**:[229] The Act with its Regulations is preoccupied with ensuring the preparation, quality and trade of hides and skins. Unlicensed premises are prohibited for use as enclosure or as a place for the preparation or buying of hides and skins for export.

2.1.29 **National Park Services Act**:[230] This Act is concerned with the establishment of protected areas for use as resource conservation, water catchments protection, wildlife conservation and maintenance of the national eco-system balance.

2.1.30 **Nigerian Communications Commission Act**:[231]This Act applies to the provision and use of all communications services and networks, in whole or in part within Nigeria or on a ship or aircraft registered in Nigeria.[232]*Inter alia*, the objective, application and scope of the Act include:

a) the creation and provision of a regulatory framework for the Nigerian communications industry and all matters related thereto.

b) the development of a communications manufacturing and supply sector within the Nigerian economy and also encourage effective research and development efforts by all communications industry practitioners.[233]

2.1.31 **Nigerian Urban and Regional Planning Act**:[234] This Act is aimed at overseeing a realistic, purposeful planning of the country to avoid overcrowding and poor environmental conditions. Accordingly, it is required that building plan should be drawn

[227]Cap W 2, LFN 2004.
[228]Water Resources Act ss. 5 and 6.
[229]Cap.H3, LFN 2004.
[230], Cap. N65, LFN 2004, effective 26/5/99.
[231]Enacted in 2003.
[232]Nigerian Communications Commission Act s. 2.
[233]S. 1 *ibid*.
[234]Cap N 138, LFN 2004.

by a registered architect or town planner.[235]Also, an application for land development would be rejected where such development would harm the environment or constitute a nuisance to the community.[236] In pursuance of strict compliance, it is an offence to disobey a stop-work order.[237] The Act also provides for the preservation and planting of trees for environmental conservation.[238]

2.1.32 **Oil in Navigable Waters Act**:[239]This Act prohibits the discharge of oil from ships into the sea and navigable waters.[240] It is also an offence for a ship master, occupier of land, or operator of apparatus transferring oil to discharge oil into Nigerian Waters.[241] Thus, it requires the installation of anti-pollution equipment in ships. The record of occasions of oil discharge is necessary for the purpose of penalty.[242]

2.1.33 **Oil Terminal Dues Act**:[243] The purpose for which this Act was passed is for levying and payment of terminal dues on any ship evacuating oil at any oil terminal in any port in Nigeria in respect of services provided at that port. The Act does not make any distinction between a public or private terminal provided that the terminal is used for the evacuation of oil and the relevant services are provided there.[244]

2.1.34 **Inland Fisheries Act**:[245] Aimed at the protection of water habitat and its species, this Act prohibits unlicensed operations of motor fishing boats within the inland waters of Nigeria.[246] It prohibits the taking or destruction of fish by harmful means.[247]

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[235]Nigerian Urban and Regional Planning Acts. 30(3).
[236]Nigerian Urban and Regional Planning Acts. 39(7).
[237]Nigerian Urban and Regional Planning Acts. 59.
[238]Nigerian Urban and Regional Planning Acts. 72.
[239] Cap O 6, LFN 2004.
[240] Oil in Navigable Waters Act s. 1.
[241]Oil in Navigable Waters Acts. 3.
[242]Oil in Navigable Waters Actss. 6 and 7.
[243] Cap. O 8, LFN 2004.
[244]*Texaco Panama Inc. v Shell PDCN Ltd* [2002] 5 NWLR (Pt. 759) 209, at 226, paragraphs B – E.
[245]Cap I 10, LFN 2004.
[246]Inland Fisheries Acts. 1.
[247]Inland Fisheries Acts. 6.

2.1.35 **Criminal Code Act**:[248] The Act contains provisions for the prevention of public health hazards and for environmental protection. Thus, it is an offence to foul the water of any spring, stream, well; tank or any reservoir or place so as to make it less fit for the purpose it is ordinarily used.[249] Similarly, use of noxious substances to vitiate the atmosphere is an offence.[250]

2.1.36 **National Environmental Standards and Regulations Enforcement Agency (Establishment) Act**:[251]Enacted on 30th day of 2007, this Act provides for the establishment of the National Environmental Standards and Regulations Enforcement Agency charged with the responsibility for the protection and development of the environment in Nigeria and other related matters, except in the oil and gas sector.[252] The Act thus repealed the Federal Environmental Protection Agency Act.[253] However all regulations, made under the FEPA Act in force at the commencement of the NESREA Act continue to be legal and in force as if made under the NESREA Act.

2.1.37 **National Oil Spill Detection and Response Agency Act**:[254]Enacted on the 18th day of October, 2006, this Act provides for the establishment of the National Oil Spill Detection and Response Agency saddled with the administration and regulation of oil spillages and related matter.[255] In line with the purpose of protecting the Nigerian environment, the agency is responsible for surveillance and ensures compliance with existing environmental legislation in relation to detection of oil spills in the petroleum sector or more appropriately the oil and gas sector.[256]

[248]Cap C 38, LFN 2004.
[249]Criminal Code Acts. 245.
[250]Criminal Code Actss. 247 and 248.
[251]NESREA Act, 2007
[252]Long Title of the NESREA Act, 2007
[253]FEPA Act, created by Decree No. 58, Cap F 10, LFN, 2004 was repealed by s.36, NESREA Act
[254]NOSDRA Act, 2006
[255]Long Title of the NOSDRA Act
[256]NOSDRA Act, 2006, s. 6

2.1.37 **Environmental Impact Assessment Act**:[257] Enacted on the 10th day of December, 1992, this Act provides for the general principles, procedures and methods for prior consideration of environmental impact assessment of certain public or private projects. It therefore checkmates possible adverse impacts on the Nigerian environment as a result of development activities embarked upon by citizens.[258] This law is undoubtedly the rallying point of all other laws and agencies with respect to any activities capable of any environmental impacts.

2.2 **Institutional Framework**: This heading considered the institutional frameworks of the Department of Petroleum Resources (DPR); Federal Ministry of Environment (FME); National Oil Spill Detection Response Agency (NOSDRA), and National Environmental Standards and Regulations Enforcement Agency (NESREA).

2.3 **National Environmental Standards and Regulations Enforcement Agency(NESREA)**:This is one of the agencies chiefly saddled with the responsibility of environmental impact assessment and enhancing standards for the protection and development of the environment in Nigeria, and for related matters.[259] Related matter as used here does not extend to or include matters on the oil and gas sector. This is because; such matters are in the domain of the National Oil Spill Detection and Response Agency Act.[260]

2.3.1 **Overview of the NESREA Act**: The NESREA Act (hereafter referred to as the Act for convenience) has a total of 38 sections under six parts.[261] However, this study

[257]Cap E12, LFN, 2004

[258]Citizens in this sense includes natural (human) and artificial (corporate) persons. See OVC Ikpeze, T Francis and L Tony-Francis, Fundamental Rights Enforcement by a Corporate Personality in The Journal of Commercial and Property Law(JCPL) Vol. 3 2015) pp. 130 – 143.

[259]Long Title of the NESREA Act, 2007.

[260] An Act to provide for the Establishment of the Oil Spill Detection and Response Agency; See the Long Title of the NOSDRA Act, 2006.

[261]**Part 1 – Establishment of the National Environmental Standards and RegulationsEnforcement Agency** comprised of S.1-Establishment of National Environmental Standards and Regulations Enforcement Agency, S. 2-Objectives of the Agency, S. 3-Establishment and composition of Council, S. 4-Tenure of office, S. 5-Cessation of membership, S. 6-Emolument, etc, of members; **PartII** – **Functions and Powers of the Agency and Council** comprised of S. 7-Functions of the Agency, S. 8-Powers of the Agency, S. 9-Functions of the Council; **PartIII** – **Structure of the Agency** comprised of S. 10-

considered the sections under which the functions, composition, objectives and establishment of the Agency are enacted.

By sections 1 and 2 of the Act, the National Environmental and Regulations Enforcement Agency (NESREA) is established with the responsibilities (objectives) among others of the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources. By section 3 of the Act, the governing Council of the NESREA is composed.[262] By section 10 of the Act, the Agency is structured into one service and four technical Directorates or Departments namely: Administration and Finance; Planning and Policy Analysis; Inspection and Enforcement; Environmental Quality Control; and Legal Services Departments, with zonal offices in the six (6) geopolitical zones[263] of the country.[264] The purport of this structure is that the administrative fashion of the NESREA has been mapped out. It also calls for easy administrative division of labour reporting in order to avoid overlapping problems. What is required is just discharge of duties under the auspices of the units that have been structured.

Directorates of the Agency; **Part IV** – **Staff of the Agency** comprised of S. 11-Appointment of Director – General and other staff of the Agency, S. 12-Pensions Act No.2 of 2004; **Part V—Financial Provisions** comprised of S. 13-Fund of the Agency, S. 14-Expenditure of the Agency, S. 15-Exemption from the income tax, S. 16-Annual estimate, S. 17-Accounts and audit, S. 18-Annual report, S. 19-Investment, S. 20-Air quality and atmospheric protection, S. 21-Ozone protection, S. 22-Noise, S. 23-Federal water quality standards, S. 24-Effluent limitations, S. 25-Environmental sanitation, S. 26-Land resources and watershed quality, S. 27-Discharge of hazardous substance and related offences, S. 28-Removal methods, etc., S. 29 Co-operations with appropriate authorities; **Part VI** – **Miscellaneous Provisions** comprised of S. 30-Power to enter premises, S. 31-Offences and penalties, S. 32-Legal Proceedings, S. 33-Power of Minister to give Directives, S. 34-Power to make regulations, S. 35-Application, S. 36-Repeal of Cap. F10 LFN, 2004, S. 37-Interpretations, and S. 38 – Citation.

[262] The composition is comprised *inter alia* of a Chairman appointed by the President on the recommendation of the Environment Minister; Permanent Secretary of the Federal Ministry of Environment; and a representative each of the Federal Ministries of Solid Minerals Development; Agriculture and Natural Resources; Water Resources; Science and Technology; as well as representatives of the Standards Organisation of Nigeria, Manufacturers' Association of Nigeria, Oil Exploratory and Production Companies in Nigeria; Director –General of the Agency; and three other persons appointees of the Minister of Environment to represent public interest. Apart from the Director-General, membership of the Council is on part-time basis.

[263] At present, the 6 Zonal offices are located in Port-Harcourt (South-South), Owerri (South-East), Ibadan (South-West), Jos (North-Central), Kano (North-West) and Gombe (North-East).

[264]This is unlike the NOSDRA Act as shall be demonstrated hereafter. For example, by S. 18 of the NOSDRA Act, apart from establishing the National Control and Response Centre, nothing more is said of the structural units or directorates of the NOSDRA. This is a necessary *sine qua non* which the NOSDRA Act omitted and which should be emulated from the NESREA Act.

Sections 7 and 8 of the Act stipulates the functions and powers of the Agency, which is chiefly to enforce compliance with laws, guidelines, policies and standards on environmental matters; in tandem with international agreements, protocols, conventions and treaties on the environment, including: climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force. Apart from creating public awareness and environmental education on sustainable development, the Agency enforces control measures through registration, licensing and permitting systems, except in the oil and gas sector[265].

Furthermore, by section 30 of the Act an officer of the Agency may, in the course of his duty, at any reasonable time and on production of his certificate of designation if so required enter and search with a warrant issued by a court, any premises, for the purpose of inspecting and taking samples for analysis which he reasonably believes, contravene environmental standards or legislation. In doing these, such officer may examine any book, document or other record found in such premises and make copies or extracts there from; and consequently obtain an order of a court to suspend, seal and close down premises from embarking on such activities which contravene the law on environmental impacts assessment and standards.

In light of the above, it would appear that, NESREA focuses on enforcement of Laws and Regulations on the environment; setting and maintaining environmental standards; creation of environmental awareness, and engaging in partnerships with the end objective of protecting and developing the environment. The process of

[265]This is because issues of registration and licensing in the oil and gas sectors are governed by the National Oil Spill Detection and Response Agency Act, 2006 and in some cases the Department of Petroleum Resources.

environmental standards, regulations and enforcement;[266] also relates to provisions of international agreements, protocols,[267] convention and treaties on the environment.[268]

In pursuit of these core objectives, NESREA is doing a lot to ensure compliance by making Regulations on climate change, biodiversity, conservation of resources, desertification, forestry, chemicals, hazardous wastes, ozone depletion, marine and wide life, pollution and sanitation.[269] It is viewed that since the sphere of NESREA does not cover the 'oil and gas sector', the inclusion of oil and gas as part of what NESREA should ensure compliance on in the NESREA Act is not necessary; as environmental matters dealing with the oil and gas sector are governed by the National Oil Spill Detection and Response Agency Act and accordingly undertaken by the Agency created under it, that is the National Oil Spill Detection and Response Agency (NOSDRA).[270] Thus, the inclusion of 'oil and gas' in section 7 (c) of the NESREA Act is a misnomer and should be expunged accordingly.

By extension, the domain of NESREA covers enforcement of compliance with policies, standards, legislation and guidelines on water quality,[271] pollution abatement, air quality and atmospheric protection;[272] ozone protection;[273] noise control and abatement;[274] effluent limitations;[275] environmental sanitation;[276] land resources and water shed quality;[277] and discharge of hazardous substances.[278] Furthermore, the

[266]NESREA Act s. 7(b).
[267] For instance the Kyoto Protocol.
[268]NESREA Act s. 7(c) .
[269] By doing all these, NESREA is gradually fulfilling its mandate, in line with its vision of ensuring a cleaner and healthier environment for Nigerians.
[270]NOSDRA Act s. 8(g)(s).
[271]NESREA Act s. 23.
[272]NESREA Act s. 20.
[273]NESREA Act s. 21.
[274]NESREA Act s. 22.
[275]NESREA Act s. 24.
[276]NESREA Act s. 25.
[277]NESREA Act s. 26.
[278]NESREA Act s. 27.

Agency must ensure that projects funded by donor organisations and external support agencies adhere to regulations in environmental safety and protection.[279]

In order to fill the lacuna of the repealed FEPA Act and give full effect to the protection of the environment and the assessment of impacts, the NESREA Act clearly conferred powers on its staff to enter premises to conduct search and even seize materials.[280] Thus, an officer of the Agency may, in the course of his duty at any reasonable time and on production of his certificate of designation if so required enter and search any premises and even seize articles. However, this power is not without some checks. Accordingly such power must be exercised with a warrant issued by a court of law.[281] In view of this, the lacuna of the lack of enforcement powers under the repealed FEPA Act has been filled by the NESREA Act.

Worrisome however, is the fact that the NESREA Act is full of 'collaboration clauses' the effect of which almost renders the roles of NESREA a failure in the absence of collaboration. For an Agency to achieve targets, it must have some things which it can do without having to collaborate with any external interest. Therefore granting the Agency full autonomy, financial, material, resources empowerment and independence would boost the purpose for which the Agency is established even in the absence of external collaboration.[282] Thus, the government should live up to its expectation for creating NESREA. There must not be one million agencies handling environmental issues before they can cover grounds. Hence, instead of not empowering NESREA adequately with resources to carry out its functions and objectives, other agencies with similar or ancillary objectives should either be scrapped or merged with NESREA. This way the government and NESREA alike will no longer continue to give the excuse of

[279] NESREA Act s. 7(b)(i).
[280] NESREA Act s. 30.
[281] Federal or State High Court.
[282] With all the resources required for the Agency to function and discharge its duties effectively, the operators will have no choice but to comply with the laws for fear of sanctions or punitive penalties.

insufficient resources being the challenge or bane of environmental issues, including assessment of impacts of projects.

2.4 **National Oil Spill Detection and Response Agency**:

Established by the National Oil Spill Detection Response Agency Act, this agency is saddled with the responsibility of oil spill detection and response in Nigeria. It is now common knowledge that oil spill incidents result in some of the most challenging consequences or adverse impacts of oil exploration, production and transportation on the environment. These oil activities more than the advantages, negatively impact the environment and socioeconomic livelihood of the people e.g. farmlands, aquatic life and water quality. For the various causes of pollution orchestrated by human activities, especially oil exploration by the multinational oil companies, Nigeria as part of the World Summits[283] on sustainable development came up with various environmental legislations.[284]

NOSDRA was established a few years after the National Oil Spill Contingency Plan of 2000. It is important to note that the first ever codified legislation on the protection of the environment in Nigeria was the defunct Federal Environmental Protection Agency- FEPA which was later subsumed under the Federal Ministry of Environment[285] by the OlusegunObasanjo administration. However, for reasons of not meeting wider coverage, especially the lacuna in the enforcement of environmental

[283] These include the various UN Conferences and Conventions which centred on the principles of recognising the importance of the environment, and interdependence of existents on it in order to ensure its sustainability. Examples are: Stockholm Declaration, 1972; Rio Declaration, 1992; Kyoto Protocol, 1997; Johannesburg Summit, 2002, etc.

[284]However, before the making of legislation on the environment, Nigerians exhibited and preserved some customary practice aimed at protecting the environment. For instance, practices like crop rotation and bush fallow rotational system of farm lands were all efforts directed at environmental protection, albeit from a crude point of view. In many communities, land was allocated for various uses- farming, forest, evil forests, hunting forests, religious forests, and forests reserved for the abode of evil spirits. See: TA Aina, and AT Salau, 'The Challenge of Sustainable Development in Nigeria' in I Ehighelua, *Environmental Protection Law* (Warri: New Pages Law Publishing Co., 2007) p. 3.

[285] The Federal Ministry of Environment was created in 1999.

standards and regulations, the NESREA Act repealed[286] the FEPA Act, in 2007, although NESREA is still under the Ministry of Environment. Thus, unlike FEPA that could only enforce environmental protection policies, NESREA can *make* and *enforce* same. (Emphasis is mine). However, NESREA was still limited in scope as it could not enforce environmental violation of oil and gas, such as spillages and emissions. It is against this backdrop and in a bid to avoid power tussle between Agencies under the Federal Ministry of Environment on issues relating to environmental violation of oil and gas sector that the NOSDRA was established.

The birth of NOSDRA is traceable to the inauguration of a National Action Co-ordinating Committee for Cleaning the Niger Delta by the Ministry of Environment in 1999.[287] Membership of the Committee comprised all relevant Government Ministries, Agencies, Oil companies, the Academia, and Non-Governmental Organisations (NGOs). The Committee had four (4) sub-committees namely:

a) State of the Environment,

b) Community and Public Affairs,

c) Oil and Gas Waste Management, and

d) Oil Spill Response.

The sub-committee on Oil Spill Response considered and finally reviewed in year 2000 the National Oil Spill Contingency Plan (NOSCP) which was drafted in 1981 and first reviewed in 1997. The National Oil Spill Contingency Plan is mandatory for all parties to the International Convention on Oil Pollution Preparedness and Response Co-operation (OPRC) to which Nigeria is a signatory. The Plan is a blueprint/manual for checking oil spill through, containment, recovery, and remediation/restoration. It is a

[286]NESREA Act, 2007 s. 36 which is not contained in the 2004 Laws of the Federation Nigeria compilation as it was enacted after then.

[287] The Niger Delta area of Nigeria is presently the hub of oil exploration and production in Nigeria. The exploration and production, as well as storage and transportation of oil in the Niger Delta have negative impacts on the fragile ecosystem of the area, notwithstanding its revenue generation. Accessed on August 6, 2014 from www.nosdra.org.

proactive strategy for preventing loss of lives, assets and natural resources.[288] The Federal Government established the National Oil Spill Detection and Response Agency as an institutional framework to implement the National Oil Spill Contingency Plan.

With zonal offices in Port Harcourt, Warri, and Uyo; in Rivers, Delta and Akwa-Ibom States respectively; the Lagos and Kaduna offices of NOSDRA started operation in April 2008, and September 2009 respectively. The Akure, Ondo State office has just been opened.[289]Dr. B. A. Ajakaiye[290] was its pioneer Director- General; thereafter in Acting capacity wasMrs.Uche H. Okwechime,[291] and at present,[292] the Director-General is Sir Dr. Peter C. Idabor,[293] who is serving a second tenure in that capacity.

2.4.1 **Overview of the NOSDRA Act**:The NOSDRA Act (hereafter referred to as the Act for convenience) has a total of 28 sections under eight parts.[294] This study however considered the provisions on the functions, composition, objectives and establishment of the Agency.

[288]Accessed August 6, 2014 from www.nosdra.org

[289]Accessed September 22, 2014 from http://www.nosdra.org/foreword.html

[290] Dr Ajakaiye was appointed Director-General/Chief Executive Officer in 2004 but then, he was appointed principally to kick-start the birth of NOSDRA. Then, there was no NOSDRA Act. So he had the responsibility to kick-start the constitution of the executive bill towards the establishment of NOSDRA. This took a couple of years, until October 2006, when the NOSDRA Act was passed into law. Accessed February 28, 2015 from http://thenationonlineng.net/%23/web2/articles/4736/1/We-keep-oil-companies-on-their-toes/Page1.html

[291] She joined the Federal Civil Service in 1981 as an Administrative Grade VIII (Assistant Secretary) and has since worked in many Federal Ministries and Agencies. She was deployed to NOSDRA from the former Federal Ministry of Environment in 2005 as pioneer staff of the Agency and specifically to set up the Administration and Finance Department. Retrieved April 18, 2016 from www.nosdra.org

[292] That is, at the time of writing.

[293] Until appointed and resumed duty on Thursday, April 20, 2011, as Director-General of NOSDRA, Dr Peter C. Idabor was with the Niger Delta Development Commission Port Harcourt (NDDC) as Head, Pollution Control/Conservation/GIS Laboratory. Retrieved March 1, 2016 from www.nosdra.org

[294]**Part I- Establishment of the National Oil Spill Detection and Response Agency- S.1**; **Part II- National Oil Spill Response Governing Board, etc**comprised of **S. 2(1)** - Establishment of the Governing Board of the Agency, **S.3**- Tenure of office, **S.4**- Cessation of membership; **Part III- Objectives, etc. of the Agency** comprised of **S.5, S.6**- Functions of the Agency, **S. 6 (2)** - Penalties, **S.7**- Special functions of the Agency; **Part IV- Director-General and Other Staff of the Agency** comprised of **S.8-** Appointment of the Director-General of the Agency, **S.9-** Appointment of other employees of the Agency, **S.10-** Members entitlement to pensions, subject to the Pensions Reforms Act; **Part V- Financial Provisions** comprised of **S.11-** Fund of the Agency, **S.12-** Expenditure of the Agency, **S.13-** Annual estimates and accounts, **S.14-** Annual reports, **S.15-** Power to accept gift, **S.16-** Power to borrow, **S. 17-** Investment; **Part VI- Establishment of National Control and Response Centre- S.18; Part VII- Federal Government Intervention, etc- S.19;** and **Part VIII- Legal Proceedings** comprised of **S.20-** Limitation of suits against the Agency, **S.21-** Service of documents, **S.22-** Restriction on execution against property of the Agency, **S.23-** Indemnity of officers, **S.24-** Secrecy, **S.25-** Directives by the Minister, etc, **S.26-** Regulations, **S.27-** Interpretation and **S.28-** Short title.

Section 1 of the Act provides for the establishment of the National Oil Spill Detection and Response Agency with the responsibility among others for preparedness, detection and response to all oil spillages in Nigeria. Notably, detection and response to oil spill incidents are important because of the effect of adverse impacts on the environment. By section 2 of the Act, the Governing Council of NOSDRA is composed.[295]

Sections 8 to 10 of the Act provides for the structure of the Agency, with the Director – General of the Agency at the helm of affairs, and other officers or employees as may be appointed for the purpose of the Agency. Furthermore, by section 18 of the Act, the National Control and Response Centre is established for the purpose of receiving and processing of reports of oil spillages from zonal units and make recommendations on actions to be taken. The officer designated to head the Control and Response Centre reports to the Director – General on all activities of the Centre.

From the statutory enactment of the NOSDRA Act, there is clearly no particular section stipulating the structure of Agency as clearly done in the NESREA Act.[296] Apart from the provision to establish the National Control and Response Centre, nothing more was said of the structural units or directorates of the Agency. This is a necessary *sine qua non*omitted in the NOSDRA Act which should be emulated from the NESREA Act.

By section 5 of the Act, the objectives of the Agency are premised chiefly on the co-ordination and implementation of the National Oil Spill Contingency Plan for Nigeria. These among others include the following:

(a) To establish a viable national operational organisation that ensures a safe, timely, effective and appropriate response to major or disastrous oil pollution;

[295]The composition is comprised of a Chairman; the Director-General of the Agency as member and Secretary to the Governing Board, a representative each of the Federal Ministries of Environment; Defence; Petroleum Resources; Transport; Aviation (Department of Meteorology); Communications; National Emergency Management Agency (NEMA); Works; Information and National Orientation; Housing and Urban Development; the Nigerian Police; Oil Products Trade Section of Lagos Chamber of Commerce (OPTS); Agriculture and Rural Development; Water Resources; and Institute of Oceanography and Marine Research.

[296]Part III of the NESREA Act, particularly s. 10.

(b) To ensure funding and appropriate and sufficient pre-positioned pollution combating equipment and materials, as well as functional communication network system required for an effective response to major oil pollution;

(c) To provide co-operate and advisory services, technical support and equipment for purposes of responding to major oil pollution incident in West African sub-region upon request by any neighbouring country, particularly where a part of the Nigerian territory may be threatened;

(d) To provide support for research and development (R&D) in the local development of methods, materials and equipment for oil spill detection and response;

(e) To co-operate with International Maritime Organisation and other national, regional and international organisation in the promotion and exchange of results of research and development programme relating to the enhancement of the state-of-the art of the oil pollution preparedness and response, including technologies, techniques for surveillance, containment, recovery, disposal, and clean up to the best practical extent.

Sections 6 and 7 of the Act provide for the functions of the Agency which basically relate to detection of oil spills in Nigeria and to ensure compliance with the National Oil Spill Contingency Plan for Nigeria, as well as the promotion of regional c-operation among member States of the west African sub-region and in the Gulf of Guinea for combating or mitigating oil spillage pollution in Nigeria's contiguous or connecting water.

The foregoing provisions indicate NOSDRA manages all oil spills in Nigeria, whether low, medium or high. However, this does not mean that it is only NOSDRA itself that goes out to tackle oil spills, but it ensures that persons responsible for oil spill incidents do what they are required to do. In other words, NOSDRA ensures that oil companies are prepared and in fact readily have the facilities to minimize oil spills, and

when any oil spill occurs, to swiftly stop and clean it; remediate the area, and pay compensation where appropriate. To achieve this collaboration, NOSDRA liaises extensively with the oil operators, by instituting regular meetings with their health, safety and environment managers, creates awareness, and visits their operational areas to meet their apex executives to convince them on why they should collaborate with the Agency to minimize oil spills in Nigeria.

Consequently, with the establishment of NODSRA a situation where oil spills were allowed in the past to linger and affect the environment is arguably no longer the same. For example, the Agency had fined Sterling Oil Exploration and Energy Production Company, SEEPCO Limited the sum of ₦68 million for oil spill negligence – that is, failure, neglect and refusal of SEEPCO to report the oil spill incident that lasted 136 days at its OKW – B location in Okpai – Oluchi community in Ndokwa East local Government Area of Delta State, between March 5 and June 21, 2011.[297] Accordingly, oil companies must accept total responsibility with regards to oil spills caused by their facilities. It is however, submitted that realising this objective appears illusory in the face of the NOSDRA Act handicapping the Agency at the mercy of the oil spillers who should be regulated.

It is ridiculous that usually, after a spillage has occurred, a Joint Investigation Visit (JIV) team is constituted, which in principle and practice it is the polluter company that initiates the process of constituting the JIV. Once a spill occurs, the company informs the JIV components concurrently.[298] This practice is erroneously based on the Polluter Pays Principle.[299]

[297]N Ezeah NOSDRA fine SEEPCO N68million over oil spillage. Accessed March, 24, 2016 from http://www.vanguardngr.com/2011/11/nosdra-fines-seepco-n68m-over-oil-spillage/

[298]Obtained from NOSDRA staff during the researcher's interview visit, at NOSDRA's Port Harcourt Office on Monday, March 5, 2012, 1: 48pm.

[299] Given a restrictive meaning as compensation by the Oil Pipelines Act,Cap O 7, LFN, 2004 in s. 11 (5),the polluter pays principle does not stipulate that a polluter should be the one to drive the process of constituting a Joint Investigation Visit team. Rather what it means is that a polluter must incur and off-set every cost occasioned by the pollution he had caused. The polluter pays principle is summarised in the words of Plato, '*If anyone intentionally spoils the water of another ... let him not only pay damages, but*

The case is different with respect to other Agencies with regulatory functions which can take actions proactively, without having to wait for the violating company or person to initiate the process of taking such action. Examples of such agencies include: National Agency for Food and Drug Administration and Control (NAFDAC),[300] Standard Organisation of Nigeria (SON),[301] National Drug Law Enforcement Agency (NDLEA),[302] and Consumer Protection Council (CPC);[303] which apart from severe imposition of penalties to act as deterrents for other prospective or would-be offenders; have enabling powers in their respective Acts to enter premises, seal up same if need be, while their officials are protected. It is thus advocated that the NOSDRA Act should be amended because the Agency as presently constituted is like a toothless bull dog that cannot bite, but only barks. In the same vein, even the United Nations Environmental Programme (UNEP) report on Ogoni Land, recommends the repositioning of NOSDRA to enable it discharge its duties effectively and efficiently. This is because the environmental regulation which is supposed to be implemented by NOSDRA is currently being carried out by the Department of Petroleum Resources (DPR). This should not be the case.[304]

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purify the stream or cistern which contains the water...' See B Jowett, The Dialogues of Plato: The Laws, vol. 4, book 8, section 485(e), (4th ed.), (Clarendon Press, Oxford 1953) at http://www.legalserviceindia.com/article/l54-Interpretation-of-Polluter-Pays-Principle.html; quoted in TO Okenabirhie*Polluter pays principle in the Nigerian oil and gas industry: rhetoric or reality*?(2010)<http://www.dundee.ac.uk> accessed May 8, 2016.

[300]NAFDAC Act, Cap. N 1, LFN 2004 s. 24.

[301]SON Act, Cap. S 9, LFN 2004 s. 18 and to demonstrate this point, the SON had impounded nine trucks of substandard 'HK British PVC insulated wire and Sunrise' cables, valued at ₦300 million in Okokomaiko area of Lagos. The Director- General of SON appreciated the fact that it could not have been possible without the partnership of majority of Nigerians in passing information or intelligent report to them. See T Agboola, SON impounds substandard cables worth ₦300m in The Nation newspapers of Thursday, April 12, 2012, p. 17.

[302]NDLEA Act, Cap. N 30, LFN 2004 s. 41.Byan amendment to this Act, the penalty for obstructing an officer has been reviewed upwards from ₦20, 000 to ₦100, 000or 5years imprisonment or to both such fine and imprisonment. See NDLEA (Amendment) Act, No. C4109, 2008s. 7.

[303] CPC Act, Cap. C 25 LFN 2004, s. 15. In the latest amendment of this section 15, a new **S. 15A** has been inserted in order to safeguard the fundamental rights of citizens in their premises. Thus, except the Minister, an inspection officer of the Council may enter premises for search on the authority of an entry warrant issued by a Judge of a High Court or by a Magistrate with jurisdiction in the area where the building or premises is situated. See CPC Amendment Act, No. C1928, 2011s. 8.

[304]Daily Trust newspaper of Thursday, 09 February 2012, in<http://www.dailytrust.com.ng/index.php?option=com_content&view=article&id=154332:expert-advocates-amendment-to-nosdra-act&catid=10:environment&Itemid=11> accessed March 20, 2016.

Nevertheless, and commendably NOSDRA has established inter-regional cooperation; and is already working with the International Maritime Organisation and its associated agencies for cooperation in west and central African sub region. This inter-regional relationship is important because oil pollution can be trans-boundary. The Agency is also working with overseas response companies such as Oil Response Company Limited in the UK, and has also increased collaboration with various government departments such as: the Ministry of Transport, Nigerian Maritime Administration and Safety Agency (NIMASA).[305]

2.5 **Unique Similarities of the NOSDRA and NESREA Acts**:For NOSDRA, it is established to: co-ordinate, and implement the National Oil Spill Contingency Plan for Nigeria. The Plan is a document for cost-effective response mechanism for Oil Spill incidents within the territories Nigeria. It is binding on *all operators* in the exploration, exploitation, production, distribution, marketing, transportation, storage and handling of petroleum products.

On the other hand, the NESREA is established to discharge the responsibility for the protection and development of the environment, conservation of biodiversity and sustainable development of Nigeria's natural resources and to enforce environmental standards, regulations, rules, laws, policies and guidelines. To achieve these tasks, both the NOSDRA and NESREA Acts share unique similarities in the efforts of the two Agencies to achieve their paramount objectives. These shall now be considered.

1. **Priority and specialised operation**: In operating the National Oil Spill Contingency Plan for Nigeria, NOSDRA emphasises high priority management and specialised oil preventive strategies to check or avoid spillages in Nigeria.[306] With this in place, it helps to possibly prevent oil spills. For its purpose, the NESREA Act having

[305] http://thenationonlineng.net/%23/web2/articles/4736/1/We-keep-oil-companies-on-their-toes/Page1.html accessed February 28, 2016.
[306] NOSDRA Act ss. 1 and 5.

repealed the FEPA Act became the forerunner legislation on the regulation and enforcement of contemporary issues of the environment in Nigeria, including environmental impacts.[307]

2. **Lead authority with corporate existence**: By the enabling legal framework, NESREA takes the lead in all matters relating to the protection and development of the environment of Nigeria.[308] NOSDRA takes the lead in respect of oil spills response management.[309] Both Agencies however liaise or collaborate with other Agencies and corporate bodies in the implementation of their mandates.[310] They can also sue and be sued in their corporate names.[311]

3. **Contribution to research and learning**:Under the NESREA Act, the Agency is mandated to collect and make available, through publications and other appropriate means (and in co-operation with public and private organisations), basic scientific data and other information relating to environmental standards.[312]This is in tandem with Environmental Impact Assessment Act which provides for establishing and maintaining a public registry for records of environmental statements submitted to the Federal Ministry of Environment or NESREA.[313]Similarly, the NOSDRA Act has provisions which can contribute immensely to the development of research and development.[314] However, the two Agencies are yet to get a pass mark on the actuality or fulfilment of these mandates. It is therefore recommended that committing resources to achieve research and development objectives will give the Agencies credence to fulfil the truism that a problem identified is half solved. Thus,

[307]NESREA Act ss. 1(2)(a); 7, 8 and 36.
[308]NESREA Act ss. 1 and 2.
[309]NOSDRA Act Ss. 6 and 7.
[310]NOSDRA Act s. 19(2) and NESREA Acts. 29.
[311]NOSDRA Act s. 1(2) and NESREA Act s. 1(2).
[312]NESREA Act s. 8(n)(p).
[313]EIA Act, Cap. E 12, LFN 2004 ss. 22(3); 57(1)(2)(3)(4).
[314]NOSDRA Act s. 5 (h).

it will go a long way on creating awareness on environmental issues while preventing avoidable degradation.

4. **Zonal offices**: Although the operational headquarters of the Agencies is in the Federal Capital Territory, Abuja,[315] they have established zonal offices in the States of the Federation.[316] It is however a misnomer for the Headquarters of the NOSDRA to be located in Abuja, where oil spills do not occur. In the words of the pioneer D-G of NOSDRA, 'Oil spills don't happen in Abuja, oil spills occur in those areas where oil operation takes place'.[317]For NOSDRA, the first field office was opened in Port Harcourt;[318] second field office in Warri;[319] third office was that of Lagos[320]- a special case because of its coastal location and because of petroleum depots-Mosimi, Atlas Cove, etc.[321]The fourth field office was established in Uyo,[322] and lately, the Kaduna,[323] and Akure[324] offices. On the other hand, NESREA has zonal offices in the six geopolitical zones of Nigeria.[325]

5. **Punitive measures to ensure restraints on environmental degradation and oil spills**:Both the NOSDRA and NESREA Acts have tried to provide some penalties[326] in order to checkmate those whose activities degrade or adversely affect the environment.

[315]National Oil Spill Detection and Response Agency NAIC House 5th Floor Plot 590 Zone AO Central Business District P.M.B 145 Garki, Abuja, Nigeria. NESREA office: 4 Oro Ago Crescent, Off MohammaduBuhari Way, Garki II, P.M.B 641, Garki, Abuja, Nigeria.
[316]NOSDRA Act s. 1(3) and NESREA Act s. 10(5).
[317]Accessed February 28, 2016 from <http://thenationonlineng.net/%23/web2/articles/4736/1/We-keep-oil-companies-on-their-toes/Page1.html>
[318]No. 32 Bodo Street, GRA, Phase II, Port-Harcourt, River State.
[319]46 Esisi Road, GRA, P.M.B 1150, Warri, Delta State.
[320]Federal Ministry of Environment, King George IV Street Games Village, Off Bode Thomas Street, Surulere, Lagos State; started 2008.
[321]Accessed February 28, 2016 from <http://thenationonlineng.net/%23/web2/articles/4736/1/We-keep-oil-companies-on-their-toes/Page1.html>
[322]No. 22 Williams Street, P.O.Box 339 Uyo, AkwaIbom State.
[323]Kaduna State Secretariat Annex OlusegunObasanjo House, Yakubu Gowon way, Kaduna Kaduna State, started 2009.
[324]No. 122 Hospital Road, AkureOndo State; started 2011.
[325] The Zonal offices are located in Port-Harcourt (South-South), Owerri (South-East), Ibadan (South-West), Jos (North-Central), Kano (North-West) and Gombe (North-East).
[326]NOSDRA Act s. 6 (2)(3) and NESREA Act s. 3. It is viewed that the penalties are however very minimal and capable of perpetuating non-compliance on the guise of a violating company saying, after all 'we pay the chicken fee'.

6. **Making and enforcement of Policies**: Under their enabling laws, both NOSDRA[327] and NESREA[328] can make regulations and enforce same for the purpose of bringing to full effects their various aims, objectives or missions. This was not the case under the repealed FEPA Act.

7. **Creation of job**: the enabling Acts empower the Agencies to appoint[329] officers and other employees for the purpose of carrying out its function and objectives. Consequently, NESREA and NOSDRA have tried (although not a pass mark) to retain the services of a hand full of job seekers in Nigeria as its staff.

8. **Investment**:[330] It is a welcome development that the Acts provide that the Agencies' money may be invested subject to the securities prescribed by the Trustee Investment Act,[331] or in such other securities as may from time to time be approved by the Minister. However, it is deplorable that from inception of the Agencies, the researcher is yet to hear on air or read of any of its investment anywhere. Instead, what are common to hear of, are financial challenges or inadequate financial allocation. It calls for proper scrutiny and accountability, if the Agencies must achieve its set objectives and functions.

9. **Employees subject to pension fund:** All employees in the service of NOSDRA[332] and NESREA[333] are subject to approved service for the purposes of the Pension Reform Act and, are accordingly be entitled to pensions, and other retirement benefits as are prescribed under the Pensions Act.

2.6 Comparison of the NOSDRA and NESREA Acts:

[327]NOSDRA Act s. 26.
[328]NESREA Act s. 34.
[329]NOSDRA Act s. 9 and NESREA Act s. 11(3).
[330]NOSDRA Act s.17 and NESREA Act s. 19.
[331] Cap T 22, LFN 2004.
[332]NOSDRA Act s. 10.
[333]NESREA Act s. 12.

1) **Administrative structure**:Apart from the establishment of National Control and Response Centre under the NOSDRA,[334] it is submitted that the NESREA is better structured and administratively more organised.[335] This is an obvious discrepancy which the NOSDRA Act should strive to correct by emulating from the NESREA Act.

2) **Director-General's associated experience:** As to the cognate experience qualification of the office of Director-General of both Agencies, it is submitted that the 15 years minimum cognate experience as applicable to the NESREA D-G,[336] may shut out younger and more active brains who may have attained 10 years' experience as applicable to the NOSDRA D-G.[337] In this regard, it is our view that the NOSDRA Act is preferably more liberal.

3) **Dual role of Director-General**: It is noteworthy that the two Acts clearly define the Director-General status as the Chief Executive and Accounting Officer, who is responsible for the execution of the day-to-day administration of the affairs of the Agency.[338] However, the NOSDRA Act provides that the D-G shall also act as the Secretary to the Governing Board.[339] This is unlike the NESREA Act[340] where, though not expressly stated, the purport is that the Permanent Secretary of the Federal Ministry of Environment plays the role of secretary. It is opined that the provision of the NESREA Act is preferred as it calls for the D-G's better concentration, focus and coordination in the administrative concerns of the Agency.

4) **Size and Performance**:Whilst the NOSDRA was established for locations of oil installations and facilities, that is oil producing areas or locations in respect of oil spillages, NESREA is made to cover other environmental matters in the whole country.

[334]NOSDRA Act s. 18.
[335]NESREA Act s. 10.
[336]NESREA Act s. 11(2) (c).
[337]NOSDRA Act s. 8(3).
[338]NOSDRA Act s. 8 and NESREA Act s. 11.
[339]NOSDRA Act s. 2(3).
[340]NESREA Act s. 3(1) (b).

In other words, the area of coverage on environmental issues by the NOSDRA is small compared to the NESREA. For this identified reason, NOSDRA does not have any reasons why it should not be well structured and effective. This is because in making remarkable impacts, NESREA appears to take the lead, as evident in their various launched Regulations. It is a commendable effort and good step in the right direction, which the administration of NOSDRA should strive to emulate.

5) **Specialised coverage and interference**:From the various functions of the two Agencies, it is clear that NOSDRA focuses on the oil and gas sector,[341] while NESREA appears to cover the field on other issues of environmental protection and development, except the oil and gas sector.[342] It is however an irony that even the oil and gas sector which the NOSDRA is supposed to undertake is usually and always usurped by the DPR in carrying out the function of setting standards and guidelines for the petroleum industry, thereby ensuring quality of petroleum products and monitoring of oil pipelines leakages or spill.[343] It is therefore opined that the role of the DPR[344] respecting petroleum products leakages should be better streamlined and limited to 'refined products', while NOSDRA should be left to undertake 'crude oil' spills or leakages even on the pipelines.

6) **Powers of operation**: Unlike the NOSDRA Act, which has no similar provision on 'powers to enter premises' a NESREA officer can, at any reasonable time (provided he has a search warrant issued by a court, and produces his certificate of designation, if required), enter and search any premises, land vehicle, tent, vessels or floating craft (except maritime tankers, barges, or floating production , storages, offload (FPSO) and

[341]NOSDRA Act ss. 1; 5(j); 6(b); 7(g).
[342]NESREA Act ss. 7(g)(h)(j)(k)(l); 8(g)(k)(l)(m)(n)(s); 24(3); 29; 30 (1)(a)(4).
[343] The Guidelines for the Operation and Maintenance of Oil Pipelines require an oil pipeline licensee to regularly patrol the right of way for prompt detection of any line-break, encroachment or any other situation that may endanger the safety of the pipeline; and report same to the DPR. See Regulation 9(h) (i) of the Oil and Gas Pipelines Regulations, under the Oil Pipelines Act.
[344]Admittedly, the DPR is also trying in its role of carrying out environmental audits of oil and gas installations, stations, deports, etc. However, we are of the view that the roles of the DPR must be streamlined from those of NOSDRA to avoid clash or conflict of interests.

oil and gas facilities or any inland water and other structures) to inspect, search, and take samples for analysis. They can also: detain any article they believe contravenes environmental regulations; obtain court orders to suspend activities; and seal and close down premises.[345] It is argued that this is majorly why the NOSDRA is regarded as a toothless bull dog that may bark without biting. There is no how an Agency such as the NOSDRA with such enormous and life impending duty can function effectively without being empowered to do so in unambiguous terms. Accordingly, the NOSDRA Act must to that extent be amended to reflect the powers to enter premises as contained in the NESREA Act.

7) **Power to make Regulations:** Unlike the NESREA Act[346] where it is the Minister of Environment who is empowered to make regulations for NESREA, under NOSDRA Act, it is the NOSDRA that is conferred with powers to make regulations for NOSDRA.[347] This gives the NOSDRA some edge over the NESREA in terms of leverage to make Regulations which will bring into effect the purpose of the Agency, without delay from having to wait for the Minister of Environment as in the case of NESREA. It means even when the need arises for necessary Regulations, NESREA must wait for the Minister to make the Regulations.

8) **Violation reporting**:On the issue of promptitude in reporting environmental degrading activities, the NOSDRA Act appears to be more explicit. It provides penalty for both the failure of an oil spiller to report a spill within 24 hours of its occurrence and to clean up the impacted sites.[348] This provision is more commendable especially where a violator appreciates that if he does not report himself he will be highly liable. Therefore since there is no such corresponding provision by the NESREA Act, it is opined that the

[345]NESREA Act s. 30.
[346]NESREA Act s. 34.
[347]NOSDRA s. 26.
[348]NOSDRA s. 6(2)(3). It is also the view of this researcher that the penalty as provided by the NOSDRA Act should be reviewed upwards in light of economic situation realities.

NEREA Act should incorporate such timeous reporting procedure, without which the violator will be held liable.

2.7 **Federal Ministry of Environment**:[349] This agency is the aftermath of the merger of the defunct Federal Environmental Protection Agency with other relevant departments in 1999 after the return of Nigeria to civilian administration. The creation of this Ministry was the result of the concern of the government to protect the Nigerian environment and of course to generate employment. The Ministry brought together the coordination of all environmental matters in various separate government ministries and departments. To ensure the effective integration and coordination of all environmental matters, housing and land use for urban development, the Ministries of Environment; Housing, and Urban Development, were merged in 2006 to become the Ministry of Environment, Housing and Urban Development.[350] However, following agitations for transformation in line with the Millennium Development Goals, the Ministry of Environment was again excised in 2008 from the Ministry of Environment, Housing and Urban Development and accorded a distinct status as the Federal Ministry of Environment.

The mandate of the Ministry revolves around its poise to empower the citizenry through employment and public awareness, take climate change actions and protect the environment. As the parent Ministry on issues of environment, its functions revolve mainly around policy awareness, enforcement and intervention, especially as it affects the following:

a) Biodiversity Conservation and Eco- tourism;

b) Climate change and clean Energy;

c) Desertification and Deforestation;

d) Effective Environmental Governance;

[349] Federal Ministry of Environment, Green Building Plot 444 AguiyiIronsi Street, Opposite Raw Materials Research and Development Council Maitama Abuja.

[350] Anon, About the Ministry (ie about the Nigeria Federal Ministry of Environment) accessed 20/04/2017 from http://environment.gov.ng/about.html

e) Effective Waste Management;

f) Environmental Standards & Regulations;

g) Flood, Erosion and Coastal Management (Shoreline Protection);

h) Mitigating the effects of Climate Change;

i) Pollution and Waste Management;

j) Reclamation and Rehabilitation of degraded land

From the foregoing areas of focus, the Ministry's areas of statutory responsibilities and functions are spelt out as follows:[351]

1. Prepare comprehensive national policy for the protection of the environment and conservation of natural resources, including procedure for environmental impact assessment of all developing projects.

2. Prepare, in accordance with the national policy on environment, periodic master plans for redevelopment of environmental science and technology and advise the Federal Government on the financial requirements for the implementation of such plans.

3. Advise the Federal Government on national environmental policies and priorities, the conservation of natural resources and sustainable development and scientific and technological activities affecting the environment and natural resources.

4. Promote cooperation in environmental science and conservation technology with similar bodies in other countries and with international bodies connected with the protection of the environment and the conservation of natural resources.

5. Cooperate with Federal and State Ministries, Local Government, statutory bodies and research agencies on matters and facilities relating to the protection of the environment and the conservation of natural resources.

[351] Accessed 30/04/2017 from http://wrf.nigeriagovernance.org/organizations/view/642

6. Prescribe standards for and make regulations on water quality, effluent limitations, air quality, atmospheric protection, ozone protection, noise control as well as the removal and control of hazardous substances.

7. Monitor and enforce environmental protection measures.

The Ministry supervises the following environmental agencies and institutions, namely:

1. Abuja Environmental Protection Board (AEPB)
2. Environmental Health Officers Registration Council of Nigeria (EHORECON)
3. Forestry Research Institute of Nigeria (FRIN)
4. National Emergency Management Agency (NEMA)
5. National Environmental Standards and Regulations Enforcement Agency (NESREA)
6. National Oil Spill Detection and Response Agency (NOSDRA)
7. Nigeria Hydrological Services Agency (NIHSA)
8. Nigeria National Park Service (NPS)
9. River Basin Authority (Federal Ministry of Water Resources)

Other related units or departments under the Federal Ministry of Environment include: Drought and Desertification Amelioration; Environmental Assessment; Erosion Flood and Coastal Zone Management; Finance and Account; Forestry; Human Resources Management; Policy Analysis; Monitoring and Inspectorate; Pollution Control and Environmental Health and Procurement.

Notably, most of the functional areas of the Federal Ministry of Environment are spelt out in the NESREA and NOSDRA Acts, except that the Ministry was not specifically established by any of the two Acts. In practice, both NOSDRA and NESREA appear to be subservient with respect to discharging their statutory functions as a result of reporting chain to their parent Ministry of Environment, a mandatory rule under the civil service. It is for this reason that this research advocates an amendment to

both NOSDRA and NESREA Acts to include the Federal Ministry of Environment in its interpretation section as an agency and to clearly spell out in distinct provisions of the laws the roles of the Federal Ministry of Environment, distinct from the roles of NOSDRA and NESREA respectively.

2.7.1 Appraisal of Federal Ministry of Environment Efforts on Environmental Impacts Assessment

It is important to underscore some of the efforts of the Ministry of Environment through the now repealed FEPA. This is because although FEPA has been repealed, the Guidelines made by FEPA are still subsisting and enforceable. As far back as 1995, following the effort of the FEPA, certain environmental impact assessment Guidelines had been made to regulate certain sectors of the Nigerian economy; as follows:

1) Agriculture and Rural Development Projects,[352] including: Agricultural Land Management;[353] Large-scale Farming;[354] Agro-industrial Projects;[355] Pest Management Programmes;[356] Dams and Reservoirs;[357] Fishery Programme;[358] Flood Management Programme;[359] Natural Forest Management Programme;[360] Plantation Development/ Reforestation;[361] Livestock and Rangeland Management;[362] Irrigation and Drainage Programmes;[363] Rural Roads and Navigational Canals;[364] and Use of Agrochemicals and Fertilizers.[365]

[352]Made pursuant to EIA Act (Lagos: International Printing Technique Ltd, 1995).
[353] See Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 1, p. 1.
[354]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 2, p.7.
[355]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 3, p.12.
[356]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 4, p.22.
[357]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 5, p.28.
[358]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 6, p.37.
[359]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 7, p.49.
[360]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 8, p.56.
[361]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 9, p.65.
[362]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 10, p.75.
[363]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 11, p. 82.
[364]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 12, p.90.
[365]Sectorial Guidelines for Agriculture and Rural Development Projects, chapter 13, p.97.

2) Manufacturing Industries,[366] including: Chemical Industries;[367] Pulp, Paper and Timber Processing Industries;[368] Food Processing Industries;[369] Iron and Steel Manufacturing;[370] Nonferrous Metals Manufacturing Projects;[371] and Fertilizer Industry.[372]

3) Mining of Solid Minerals, Beneficiation and Metallurgical Processes.[373]

Each of the above stated sectorial Guidelines is a manifestation of the good steps taken by the Federal Ministry of Environment to simplify the process of EIA for any proponent of a project. Stating the components, parts or steps of an EIA process, each of the Guidelines clearly followed the same format. Therefore, the Guidelines provide a template which should be adapted while conducting EIA of projects. Consequently, the process of conducting an EIA has been simplified for any project proponent to simply adapt the template on the general components of the Guidelines for EIA.

2.7.2 **Usurpation of the functions of NESREA on Environmental Impact Assessment by the Federal Ministry of Environment**:

Since the Nigerian government became aware of the importance of, and the need to conduct an environmental impacts assessment, it has through the Federal Ministry of Environmental stipulated certain guidelines for environmental impact assessment. Although virtually all the published Guidelines were done by the Federal Ministry of Environment (FME) through the instrumentality of the defunct Federal Environmental

[366]Made pursuant to EIA Act, *loc cit*.
[367] See Sectorial Guidelines for Manufacturing Industries (Guidelines for Chemical Industry Sub-Sector), pp. 37 – 51.
[368]Sectorial Guidelines for Manufacturing Industries (Guidelines for Pulp, Paper and Timber Processing Sub-Sector), pp. 52 – 69.
[369]Sectorial Guidelines for Manufacturing Industries (Guidelines for Industrial Food Processing Sub-Sector), pp. 70– 86.
[370] Sectorial Guidelines for Manufacturing Industries (Guidelines for Iron and Steel Manufacturing Sub-Sector), pp. 87 – 101.
[371]Sectorial Guidelines for Manufacturing Industries (Guidelines for Non-Ferrous Metals Sub-Sector), pp.102 – 118.
[372]Sectorial Guidelines for Manufacturing Industries (Guidelines for Fertilizer Industry Sub-Sector) pp. 119 – 135.
[373]Made pursuant to EIA Act by the defunct Federal Environmental Protection Agency (Nigeria: International Printing Technique Ltd, 1995).

Protection Agency (FEPA);[374] they are nevertheless, valid and subsisting. Thus, all the publications of FEPA are deemed to have been validly done and subsisting under the Federal Ministry of Environment and the NESREA. In practice however; the Federal Ministry of Environment is still the agency primarily saddled with the responsibility of driving the process of EIA, leaving only the area of compliance enforcement for NESREA.

Strictly, this is contrary to the letters of the NESREA Act which provides that the agency to be saddled with the responsibility of driving the EIA process is the National Environmental Standards and Regulations Enforcement Agency (NESREA).[375] This has been given judicial recognition in the case of *Helios Towers v NESREA &Ors*[376]where the Court of Appeal upheld the trial Court's decision that 'NESREA is the statutory body established by the National Assembly to replace the Federal Environmental Protection Agency [FEPA] and the body entrusted with the enforcement of environmental standards and regulations in Nigeria. It is therefore the body that is vested with powers to issue environmental impact assessment certificate'. It is rather perturbing that in practice, many of the statutory functions of NESREA are still been undertaken by the parent ministry, the Federal Ministry of Environment. For example, a project proponent after identifying a location for the project (but before outright purchase of the said site) is expected to go to the regulatory authority on environmental impact assessment. It would appear that by the provision of the EIA Act, the procedure is to apply in writing to the Federal Ministry of Environment through the NESREA.[377] However, in practice, the proponent applies directly to the Federal Ministry of

[374] NESREA Act, s. 36 repealed the FEPA Act and FEPA, which by implication have been replaced the NESREA Act and NESREA respectively.
[375]NESREA Act, s. 37.
[376] Unreported Appeal No: CA/K/123/2010, lead judgment delivered on the 10/12/2014 by Hon. Justice AminaWambai at the Court of Appeal, Kaduna Division. Reported in THISDAY of 3rd March, 2015 by Modupe O. Otoide, Aluko&Oyebode, Lagos, accessed 26th June, 2016 from: <www.pressreader.com/**nigeria**/thisday/20150303/282741995259623>
[377]This is because of the clear provisions of the EIA Act, s. 61(1) to the effect that the term 'Agency' means the agency established by the 'Federal Environmental Protection Agency Act'. However, since FEPA Act has been repealed by the NESREA Act, the agency automatically became the NESREA.

Environment. This means that despite the repeal of Federal Environmental Protection Agency Act by the NESREA Act, the Federal Ministry of Environment still plays the roles of the NESREA in the EIA Act.

Furthermore, after successful conduct of an environmental impact assessment, the certificate issued to the project proponent is signed by the Federal Ministry of Environment, except that on the face of the certificate is stated 'Environmental Impact Statement (EIS)' which means that an environmental assessment of the project has been completed, and subject only to the stipulated terms and conditions stated on the certificate.[378] Subsequently, the proponent is expected to present a copy of the EIS certificate to NESREA, following which NESREA would issue him a certificate of compliance with the EIA process. This procedure reduces the roles of NESREA which include the commencement and conduct of the EIA of a project to a nominal one after the processes would have been undertaken by the parent Ministry, the Federal Ministry of Environment. This leaves NESREA with only enforcement of compliance as contained in the EIS.

In effect, instead of NESREA, it is the Federal Ministry of Environment that actually drives the process of the impact assessment. It is opined that the Federal Ministry of Environment should be ordered by Executive Order to stop encroaching on the statutory functions of NESREA. Thus, the function of the Federal Ministry of Environment must be stream-lined from those of NESREA as contained in the EIA Act. The roles of the Federal Ministry of Environment over NESREA should at best be supervisory and advisory. In the alternative, if the said Federal Ministry must continue its present roles in the assessment of environmental impacts process, then, the EIA Act must be amended to reflect such roles to the effect that the Federal Ministry of Environment as an Agency shall drive the process of conducting an EIA of a project.

[378] EIA Act, s.41.

Consequently, the definition section of the EIA Act should also include the Federal Ministry of Environment in defining the meaning of the term, 'Agency'.

2.8 **Department of Petroleum Resources**:[379] By its name, this agency regulates the activities of the mainstay of the Nigerian economy, the petroleum industry sector. Historically petroleum matters in Nigeria were handled by the Hydrocarbon Unit of the Ministry of Lagos Affairs, which reported directly to the Governor-General in the early fifties. Apart from keeping records of matters relating to exploration, and importation of petroleum products, the Unit also enforced safety and other regulations albeit basically on importation and distribution of petroleum products at the time. Following the expansion of the petroleum sector, the Unit was upgraded to a Petroleum Division within the Ministry of Mines and Power.

In 1970, the Division was renamed the Department of Petroleum Resources, but retained its statutory supervisory role in the oil industry, when the Nigerian National Oil Corporation (NNOC) was created to engage in commercial activities in the oil industry in 1971. By 1975, the Department was constituted into the Ministry of Petroleum and Energy and subsequently renamed the Ministry of Petroleum Resources. Following the merger of the new Ministry of Petroleum resources with NNOC to establish the Nigeria National Petroleum Corporation (NNPC) in 1977, the Department was excised from energy matters and became the Petroleum Inspectorate Department, an integral part of the NNPC entrusted with the regulation of the petroleum industry.[380]

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[379] National Headquarters at 5/7 KofoAbayomi Street, Victoria Island, Lagos; Zonal offices at: 7, Sylvester Ugoh Crescent Jabi, Abuja;NNPC Building, 4 -9, Moscow Road. Port Harcourt; 19/21, Warri Sapele Road; 24 Gobarau Road. GRA, Kaduna State; Bama Road, Sports Council, Maiduguri; 1, Chief Patrick Esomonu Avenue, Owerri, Imo State; and Field Offices at:No. 1, E. E. Nwanagu Close, State Hospital Area, Ring Road, Ibadan; 19A, Nupe Road, GRA. Ilorin; 9, Wamba Rd. Tudun Wada GRA, Jos;No. 6, Aniebo Quarters, off Ganaja Rd, Lokoja;Spring Towers. 229, Aba/ Owerri Road, Aba;6, EkpeneUkpa Avenue, Eket; Plot B & C, Ondo State Industrial Layout, Ilesha / Owo Exp. Way Akure; 146, ShehuKazaure Road, Hotoro GR.A. Kano; No. 3 Sultan Ibrahim Dasuki Road, Sokoto; 39, Police Barracks Road, Karewa New Extension, GRA, JimetaYola; Alh. Aliyumuh'd Plaza, Bauchi Road; Bauchi; Plot 1, Enugu/ PH Exp. Way, near NNPC Mega Station, Enugu; Bayelsa State Secretariat Annex II, Yenagoa; Katsina State Secretariat, Old Ministry of Works, Housing Block, Katsina; 6A, Oghosa Crescent,off Ihama Road, GRA Benin City; and Kure House, No A6 Muazu Mohammad, Road Minna

[380]The various laws upon which DPR relied to carry out its operation include: Associated Gas Re-Injection Act 1979; Associated Gas Reinjection Regulation 1980; Deep Offshore and Inland Basin Production

Yet again, in 1985, a new Ministry of Petroleum Resources was recreated, while the Petroleum Inspectorate Department remained within the NNPC structure and retained its regulatory functions. Upon the re-organisation and commercialisation of the NNPC in 1988, the Petroleum Inspectorate was excised from the NNPC due to the non-commercial nature of its functions, and merged with the Ministry of Petroleum Resources to constitute its technical arm, following which it was re-named the Department of Petroleum Resources.[381]

The DPR from its age and roles appears to be the leading regulator in the oil and gas industry in Nigeria, despite the establishment of the National Oil Spill Detection and Response Agency Act. Accordingly, the DPR functions to ensure compliance with petroleum laws, regulations and guidelines in the Oil and Gas Industry. The discharge of these responsibilities involves monitoring of operations at drilling sites, producing wells, production platforms and flow stations, crude oil export terminals, refineries, storage depots, pump stations, retail outlets, any other locations where petroleum is either stored or sold, and all pipelines carrying crude oil, natural gas and petroleum products, while carrying out the following functions, among others:

(i) Supervising all Petroleum Industry operations being carried out under licences and leases in the country.

(ii) Monitoring the Petroleum Industry operations to ensure they are in line with national goals and aspirations including those relating to flare down and Domestic Gas Supply Obligations.

Sharing Contracts Act (as amended) Cap D 3, LFN, 2004; Deep Waters Block Allocation to Companies (block-in-rights) Regulation 2003; Oil Prospecting licences (Conversion to oil mining leases, etc) Regulations 2003; Oil in Navigable Waters Act; Oil Pipelines Act 1956; Mineral Oils (safety) Regulations 1997; Marginal fields operations (Fiscal Regime) Regulations 2005; Petroleum Act 1969; Petroleum (Amendment) Decree 1996; Petroleum Regulations 1967; Petroleum (Amendment) Regulation 1989; Petroleum (Drilling and Production) Regulations 1969; and Petroleum (Drilling and Production (Amendment) Regulations 1988.

[381]http://www.dprnigeria.com/home.html accessed April 30, 2017 and C Nwachukwu, Redefining DPR's role in Nigeria's oil, gas sector, accessed March 24, 2016 from http://www.vanguardngr.com/2011/04/redefining-dprs-role-in-nigerias-oil-gas-sector/. According to Nwachukwu, 'as proposed by the Petroleum Industry Bill, some of the functions of the DPR will be shared among the various regulators along the lines of sub-sectors, while it retains most of the technical functions.

(iii) Ensuring that Health Safety and Environment regulations conform to national and international best oil field practice.

(iv) Maintaining records on petroleum industry operations, particularly on matters relating to petroleum reserves, production/exports, licences and leases.

(v) Advising Government and relevant Government agencies on technical matters and public policies that may have impact on the administration and petroleum activities.

(vi) Processing industry applications for leases, licences and permits.

(vii) Ensure timely and accurate payments of Rents, Royalties and other revenues due to government, including: royalties on all producing fields; annual rents from awarded concession annually, and penalties imposed on oil companies for gas flaring and also ensures collection of Petroleum Profit Tax (PPT) by the Federal Inland Revenue Service (FIRS).

The foregoing functions of the DPR can be conveniently fragmented into its roles in the upstream and downstream sectors of the petroleum industry.

Roles of DPR - Upstream

a) Administration of Oil and Gas acreages and concessions

b) Conservation of Nigeria's Hydrocarbon Resources

c) Ensuring compliance with Health Safety & Environment (HSE) Standards

d) Implementation of government policies on Upstream Oil and Gas matters.

e) Maintenance and administration of the National Data Repository (NDR)

f) Optimizing government revenues in Oil and Gas activities

Roles of DPR - Downstream

In regulating activities between field transfer of Crude Oil and loading at the export terminal as well as the use of the Oil by the end–user, which also encompasses ocean transportation of Crude Oil, Supply and Trading, Refining, Distribution and Marketing of the Oil products, the downstream roles of the DPR include the following:

a) Issue approvals and licences for Refineries, Petrochemicals, Fertilizer Plants, Jetties, Depots, Lube blending and Retail Outlet
b) Ensure prompt nomination of crude, condensate natural gas liquid (NGL) export vessels
c) Ensure integrity of downstream Oil and Gas facilities and pipeline systems
d) Issue import permit and clearance for petroleum products
e) Issue export permits for crude oil and petroleum products
f) Determine the quality of imported petroleum products to ensure they meet established standards.
g) Issue certification of oilfield chemicals used in the oil and gas industry.

Examples of the Guidelines and Permits for which the DPR issues Licences and Permits as part of its statutory functions include:

a) Guidelines and Requirements for the Application of Oil and Gas Industry Services Permit (OGISP)
b) Revised Crude Oil Terminal Operations Procedure Guide;
c) Guidelines for Approval to Construct and Operate Petroleum Products Filling Station;
d) Guidelines and procedures for Obtaining Minister's Consent to the Assignment of Interest in Oil and Gas Assets;
e) Guidelines for the Importation of Petroleum Products into Nigeria;
f) Procedure Guide for the Design and Construction of Oil and Gas Surface Production Facilities;

g) Procedure Guide for the Grant of Licence to Retail Lubricating Oils in Nigeria;

h) Guidelines and Procedure for the Construction, Operation and Maintenance of Oil and Gas Pipelines and their Ancillary Facilities;

i) Procedure and Conditions to be fulfilled before the Grant of Approval to Construct/Modify Lubricating Oil Blending/Recycling Plant for the Manufacture of Lube Oil;

j) Guidelines for the Establishment of Hydrocarbon Process Plants (Petroleum Refinery and Petrochemicals Plants) in Nigeria;

k) Guidelines for Bunkering Operations in Nigeria;

l) Statutory Guidelines for Operation of Coastal Vessels; and

m) Procedure Guide for the Construction and Maintenance of Fixed Offshore Platforms.

Strictly, the foregoing roles of the DPR appear to overlap to a great extent with the provisions of the Petroleum Act which vests in the Minister of Petroleum Resources the power to grant oil exploration licenses/leases; as well as the supervisory powers of the Minister over all the operations for which licenses and leases are granted, and to make regulations for the purpose of the Act.[382] Furthermore, the Minister may delegate his power to grant licenses for the sale of petroleum products.[383]

The DPR vis-à-vis the Petroleum Industry Governance Bill 2016

It is important to state that should the Petroleum Industry Governance Bill 2016 (the Bill, 2016) become enacted as law, a body known as the Nigeria Petroleum Regulatory Commission would have been established as the sole regulatory institution for the Nigeria oil and gas industry,[384] which role is currently being performed by the DPR, albeit with the influence of the NNPC. Consequently, unlike the Petroleum Industry Bill

[382] Petroleum Act, Ss.2, 8 and 9.
[383] Petroleum Act, S.4. However, S.2 is however silent as to whether the Minister's power to grant exploration licenses/leases can be delegated, thereby creating the impression that the Minister cannot delegate his power to grant exploration licenses/leases. See: Anon, DPR's Regulatory Powers are Suspect accessed 30/04/2017 from http://energynews-ng.com/dprs-regulatory-powers-are-suspect/
[384]The Bill, 2016, s.4.

that sought to create various agencies to regulate the technical and commercial aspects of the petroleum sector value chain: upstream, midstream and downstream, the new Bill seeks to establish one strong regulatory Commission that would be regulating the technical and commercial aspects of the petroleum industry. Accordingly, the Commission is expected to assume all the rights, interests, obligations and liabilities of the Petroleum Inspectorate, the DPR, and the Petroleum Products Pricing Regulatory Agency "PPPRA").[385]

It would appear that the power to make regulations and take decisions shall be vested in the Agency (Commission) instead of the Minister of Environment as is presently the situation in many laws, including the NESREA and NOSDRA Acts.[386] The Commission would also be responsible for all aspects of health, safety and environmental matters in the industry and is empowered to make regulations in consultation with the Federal Ministry of Environment and issue directives thereon. Furthermore the overlapping roles or clashes usually orchestrated between the DPR and the Weight and Measures Department of the Federal Ministry of Commerce and Industry are addressed by the provision that the Commission shall notwithstanding the provisions of any other law or regulations, *exclusively* supervise and ensure accurate calibration and certification of equipment used for fiscal measures in the industry.[387]

The scope of the commercial and technical regulatory role of the Commission in the upstream, midstream and downstream sectors are stipulated to cover the following areas, namely:

1) licenses, leases and permit terms compliance monitoring;
2) administration and enforcement of policies, laws and regulations, environmental and technical standards;

[385]AOgunbanjo, An Analysis of the Petroleum Industry Governance Bill 2016 – Establishment of the Nigeria Petroleum Regulatory Commission in http://www.petroleumindustrybill.com/2016/04/21/an-analysis-of-the-petroleum-industry-governance-bill-2016-establishment-of-the-nigeria-petroleum-regulatory-commission (April 21, 2016) accessed 30/04/2017.
[386] The Bill, 2016, s. 4(5).
[387] The Bill, 2016, s. 6(2)(b)(4)(b).

3) determination of tariff and pricing methodology for third party access to petroleum facilities;
4) downstream operations licensing;
5) control of the exploration of the frontier basins of Nigeria;
6) conduct of bid rounds and other processes for the award of petroleum exploration and production licenses and leases (this in our view seems to remove the unsavory discretionary power granted to the president under the PIB to grant licenses and leases);
7) compute, determine, assess and ensure payment of royalties, rentals, fees, and other charges for upstream petroleum operations;
8) ensuring accurate calibration and certification of equipment used for fiscal measures for the upstream petroleum operations and similarly for downstream operations;
9) supervising and ensuring accurate calibration and certification of equipment used for fiscal measures.

From the foregoing, it would appear that number 2 seems to overlap with one of the core functions of NESREA,[388] except it is streamlined to the extent that it does not include incidents of oil spillages. Similarly, it must be stipulated that the administration and enforcement of policies, laws and regulations, environmental and technical standards do not extend to areas covered by the NESREA Act. By this there would be a common understanding or connection of the several enactments on seeming similar objectives and to avoid institutional disharmony.

[388] Compared with NESREA Act, s. 7 on the functions of NESREA which basically relate to enforcement of compliance with laws, guidelines, policies and standards on environmental matters.

CHAPTER THREE:

CONTENTIOUS ISSUES RELATING TO ENVIRONMENTAL IMPACT ASSESSMENT IN NIGERIA

3.1 Historical Background of the Environmental Impact Assessment Act:

The conceptof the Nigerian Environmental Impact Assessment lawis traceable to the now established concept of sustainable development.[389]Sustainable development underscored the importance of the human environment, which is looked to for food, fuel, medicines, a realm of beauty and spiritual assistance.[390] Sustainable development promotes the legal regimes or laws which encourage and enhance the conservative use of natural resources, pollution control measures and the prior considerations of environmental impacts before the execution of related projects.

Thus, it ensures the integration of environmental considerations into developmental process.[391] Founded on the principles of protection of the environment and bio-diversity, sustainable development has been embraced by various governments all over the world. In pursuit of this objective, governments that are agreed to the concept have set regulatory measures, aimed at encouraging humanity not to consume everything today at the expense of future generations. This is because a generation that uses up everything pertaining the environment without recourse to the unborn generations is guilty of environmental- degradation, humiliation, poverty, terrorism and other crimes. For example, in 1990, Saro-Wiwa led the Ogoni to demand that Shell turn over more oil revenue to locals and clean up oil pollution. In response to these demands and an uprising among local communities, the government (then a military dictatorship) in cohort with Shell heavily armed soldiers in their troops to quash the protests.

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[389]The starting point of the general idea of what is meant by 'sustainable development was the definition in the Brundtland Report, as follows: 'A development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.

[390]K Anan, Secretary-General, United Nations Opening Statement at the World Summit on Sustainable Development See A/ CONF /99 /20 at 154 quoted in Oludayo A.G. *infra*.

[391] AG Oludayo, *Environmental Law and Practice in Nigeria* (Lagos: University of Lagos Press, 2004) p.3.

On November 10, 1995, the government executed Saro-Wiwa, while eminent scholars have continued to describe Shell's position as irresponsible propaganda designed to discredit those who are trying to do something about the environment.[392] Notably, the outcry of the late KenSaroWiwa against the exploitation of oil resources in Ogoni and by extension the Niger Delta by the Federal Government of Nigeria and Shell Petroleum Development Company has not only given rise the deaths of many agitators, it has degraded the environment greatly and also led to the uprising of several militant groups. In order to safeguard future generations from the possible menace of environmental degradation, the issue of sustainable development was extensively addressed by the Stockholm Declaration.

By the Declaration, the concept of sustainable development was considered to the effect that:

> The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments.

Some principles of the Stockholm Declaration are pungent on the concept.Principle 3 states thus: The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved. Principle 13 also states: 'In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population. Principle 24 states in part, 'International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing'. Principle 25 states that: 'States shall ensure that international organizations

[392]Ogoni Trials and Travail (Civil Liberties Organisation, 1A Hussey Street, Off Herbert Macauley Street, Jibowu, Yaba, Lagos, 1996) pp. 4, 14-17, 61-65.

play a coordinated, efficient and dynamic role for the protection and improvement of the environment'.

The Stockholm Declaration further addressed the following issues:

a) **Habitat conservation**: This subject was covered by the Declaration in its Principle 4 thus: 'Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperiled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development'.

b) **Wild life conservation**: This concern was also covered by Principle 4 of the Declaration reproduced supra. It states, 'Nature conservation, including wildlife, must therefore receive importance in planning for economic development'.

c) **Toxic substances**: On this concern, it was declared by Principle 6 as follows: 'The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of ill countries against pollution should be supported'.

d) **Sea pollution**: This concern was also expressed by the Declaration and accordingly stated by Principle 7 thus: 'States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea'[393].

e) **Population**: The Declaration addressed the issue of population, how it affects the environment and what proactive efforts should be made to ameliorate or salvage it. It was first introduced by preamble 5 as a problem thus: 'The natural growth of

[393] See also Preamble 3, Principles 6 and 22 to the Declaration.

population continuously presents problems for the preservation of the environment, and adequate policies and measures should be adopted, as appropriate, to face these problems'. As one of the measures that should be adopted to face population challenge, Principle 13 states in part, 'States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population'. Principle 16 adumbrates further thus: 'Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development'. Notably, if nothing is done in this regard, adverse effects would be the outcome[394].

f) **Nuclear weapon**: On this subject the Declaration provides in Principle 26 thus: 'Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons'.

The foregoing principles which are foundational to the concept of sustainable development were further expounded by the Rio Declaration.[395] Following the Bruntland Report, the Rio Declaration clarified comprehensively the coverage of the concept of sustainable development, as it was virtually referred to in all the provisions of its

[394] Read Principle 16 in part as follows: '…those regions where the rates of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development'.

[395] The Rio Declaration on Environment and Development (1992) in its Principle 4 provides: 'In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.'. See also: Article 24 of the African Charter on Human and Peoples Rights which provides thus: 'All Peoples shall have the right to a general satisfactory environment favourable to their development'. Authoritatively this provision imposes clear obligations upon a government to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.

Principles and Agenda 21.[396] As an integral part of sustainable development, environmental impact assessment was captured and proclaimed by Principle 17 of 'Agenda 21' as follows:

> Environmental Impact Assessment as a national instrument shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and subject to a decision of a competent authority.

Arguably, the Stockholm and Rio declarations are indicate global acceptance of the environmental impact assessment as a principle of sustainable development. Thus, Environmental Impact Assessment (EIA) is now recognised as a tool for achieving sustainable development.

The process of EIA came to the fore in Nigeria as part of its resolve to key into the principles of sustainable development following it participation at the various World Summits on sustainable development.[397] It is nowmandatory to conduct an EIA in respect of every project capable of impacting the environment in Nigeria.[398]Thus, the Nigerian legal regime on environmental impact assessmentrequires all agencies of government to enforce the inclusion in every proposed project a report of how the natural resources and human health may be affected as a result of the project.[399]Such project proposal ought to give detailed non-technical summary statementsthe following:

(a) Proposed activities and location;

(b) Environmental effect of the proposed activities;

(c) Alternatives to the proposed activities, including the direct or indirect cumulative, short-term and long-term effects;

[396]Agenda for the 21st century of the United Nations Conference on Environment and Development (UNCED), which was held on 3-14 of June, 1992, in Rio de Janeiro, Brazil.

[397] These include the various UN Conferences and Conventions which centred on the principles of recognising the importance of the environment, and interdependence of existents on it in order to ensure its sustainability. Examples are: Stockholm Declaration, 1972; Rio Declaration, 1992; Kyoto Protocol, 1997; Johannesburg Summit, 2002, etc.

[398] This point is given credence by the enactment section of the EIA Act as follows: 'An Act to set out the general principles, procedure and methods to enable the prior consideration of environmental impact assessment on certain public or private projects'.

[399] Environmental Impact Assessment Act, Cap E12, Laws of the Federation of Nigeria, 2004.

(d) Available measures to mitigate adverse environmental impacts of the proposed activities and assessment of those measures;

(e) Gaps in knowledge and uncertainty which may be encountered in computing the required information;

(f) Indication of whether the environment of any other State or local government area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives.[400]

3.2 **Overview of the Environmental Impact Assessment (EIA) Act**:[401]

The Act has a total of 62 sections under three parts.[402] The sections under parts I and II deal with General principles of environmental impact assessment, and environmental assessment of projectsrespectively. Part III considers the miscellaneous provisions on the power to make regulation and the facilitation of environmental impact assessment,

[400]The description is otherwise referred to as the 'minimum content of environmental impact assessment. See EIA Act, s.4.

[401]Cap E12, Laws of the Federation of Nigeria, 2004.

[402]PART I – General principles of environmental impact assessment: comprised of: s.1– Goals and objectives of environmental impact assessment, s.2– Restriction on public or private project without prior consideration of the environmental impact, s.3– Identification, etc., of significant environmental issues, s.4– Minimum content of environmental impact assessment, s.5– Detailed degree of environmental significance, s.6– Examination of environmental impact assessment by the Agency, s.7– Opportunity for comments by certain groups, s.8– Decision not to be given until the appropriate period has elapsed, s.9– Decision on the effect of an environmental impact assessment to be in writing, s.10– Supervision of the activity, s.11– Notification to potentially affected States or local government area, etc., s.12– Mandatory study list not to be carried out without the report of the Agency; PART II – Environmental assessment of projects: comprised of: s.13– Cases where environmental assessment is required, s.14– Excluded projects, s.15– Environmental assessment process, s.16– Factors for consideration of a review panel, s.17– Factors not included, s.18– Screening, s.19– Declaration of class screening report, s.20– Use of previously conducted screening, s.21– Decision of the Agency, s.22– Mandatory study, s.23– Use of previously conducted mandatory study, s.24– Public notice, s.25– Decision of Council, s.26– Referral to Council, s.27– Termination by responsible authority, s.28– Termination by Council, s.29– Referral by Council, s.30– Decision of the Council, s.31– Appointment of mediator, s.32– Determination of parties, s.33– Mediation, s.34– Subsequent reference to review panel, s.35– Appointment of review panel, s.36– Assessment by review panel, s.37– Hearing of witnesses, s.38– Public notice, s.39– Decision of Agency, s.40– Design and implementation, s.41– Certificate, s.42– Definition of jurisdiction, s.43– Joint review panel, s.44– Substitute for review panel, s.45– Conditions, s.46– Substitution, s.47– Inter-States environmental effects, s.48– International environmental effects, s.49– Environmental effects on Federal and other lands, s.50 – Application of certain provisions, s.51– Power to prohibit a proponent, s.52– Injunction, s.53– Commencement of prohibition, s.54– International agreement, s.55– Public registry, s.56– Preparation of statistical summary, s.57 – Defect in form or technical irregularity; and PART III Miscellaneous: comprised of: s.58– Power to facilitate environmental assessment, s.59– Power to make regulations, s.60– Offence and penalty, s.6l– Interpretation, and s.62– Short title.

including the offence and penalty sections. These provisions of the Act have been outlined and considered.

1) **Goals and Objectives of Environmental Impact Assessment**: As part of the general principles, section 1 of the EIA Act provides for the goals and objectives of environmental impact assessment, the purport of which is that every person, authority, corporate or incorporated body, including federal and State governments intending to embark or authorise the embarking on projects that have the likelihood of affecting the environment inany way must carry out an impact assessment of such project. This assessment must be done in accordance with regulatory laws for that purpose. To achieve this, there is also a need for synergy for information exchange and consultation between the projects proponents, government agency and the community which will be affected directly by the project.

The goals and objectives of the environmental impact assessment are captured by the enactment section of the EIA Act thus: 'An Act to set out the general principles, procedure and methods to enable the prior consideration of environmental impact assessment on certain public or private projects'.

Accordingly, the objective of the EIA is basically to put in place an organisational chart for the procedures that are required when any human or corporate person, including the government at any level wants to execute projects, programmes, activities or investments that have the likelihood of impacting the environment in any manner.The goal therefore is to ensure compliance with the organisational chart for procedures that have been laid down.

The idea of stating the objective before the goal helps in distinguishing the roles played by the Federal Ministry of Environment (FME) and the National Environmental Standards and Regulations Enforcement Agency (NESREA). For example, while the FME may be seen to drive the objective, its sub-agency, the NESREA is seen as the force

behind the implementation or enforcement of the objectives, otherwise termed the goals. It is also provided that the States and Local Government Areas may make laws which are consistent with the general objectives and goals of environmental impact assessment. This is consistent with the constitutional provision which leaves issues bordering on the environment under the concurrent legislative list. This means that the three levels of government under the Nigerian federal arrangement can make laws and regulation which aim at achieving the objectives of the EIA Act.

The Constitution enacts in section 4 the division of the areas of legislative competence into three comprising matters grouped under the Exclusive Legislative List, Concurrent Legislative List, and those matter not listed in either the Exclusive Legislative List or the Concurrent List which are under the law regarded as matters on the Residual List.[403] Under this Constitutional arrangement, the Federal Government has exclusive powers over all matters within the Exclusive Legislative List. In respect of such matters, no State Government or any other authority can exercise any legislative power competently. However, in respect of matters under the Concurrent Legislative List the extent of powers exercisable by either the Federal Government or the StateGovernments has been clearly defined within the list. The position of the law is that the Federal Government cannot competently make any law in respect of any matter which is not contained in the Exclusive Legislative List or beyond the limit of the powers allotted to it under the Concurrent Legislative List. The State Government on the other hand has powers to make laws in respect of any matter not contained in the Exclusive Legislative List and in respect of all matters within the concurrent Legislative List subject only to the limitations expressly contained in the said Concurrent Legislative List.

[403] Exclusive Legislative List is contained in Part I, Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended); while Concurrent Legislative List is in Part II, Second Schedule to the Constitution.

Matters of environmental nature, for which environmental impacts assessment may be required in the exclusive legislative list (Federal Government only) include the following:

a) Construction, alteration and maintenance of roads designated as Federal trunk roads;
b) Fishing and fisheries other than fisheries in rivers, lakes, water ways, ponds and inland waters within Nigeria;
c) Maritime shipping and navigation including navigation and shipping on the River Niger and its affluent and on any such other inland water way as may be designated by the National Assembly to be an international waterway or to be an interstate waterway;
d) meteorology;
e) Mines and minerals, including oil fields, oil mining geological surveys and natural gas;
f) Nuclear energy;
g) Quarantine;
h) Water from such sources as may be declared by the National Assembly to be sources affecting more than one State.
i) Any matter incidental or supplementary to any of the matters mentioned above;
j) Any other matter with respect to which the Federal Government has power to make laws in accordance with the provisions of the Constitution.

Other matters such as: environmental pollution, environmental protection or environmental impact assessment not specifically mentioned in the Exclusive Legislative Listcould be viewed as a matter within the Concurrent List and as such within thelegislative competence of the States. However, the Constitution has made provision for ‘Environmental Objectives’under the Fundamental Objectives and Directive

Principles of State Policy,[404] to the effect that the Federal Governmentshall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.[405] The Federal Government is thus under the Exclusive Legislative List also empowered to establish and regulate authorities for the Federation or any part thereof to promote and enforce the observance of the fundamental objectives, including these 'Environmental Objectives'. Therefore,predicated under the doctrine of covering the field, a direct legislation by the State Governments on environmental impact assessment or environmental protection on pollution, for example, gas flaring would easily be resisted as being unconstitutional.[406]This is in view of the fact that such areas of the law have already been covered by many items on the Exclusive Legislative List especially by virtue of the provisions on the environmental objectives which would appear to have been regulated by some existing laws of the Federal Government relating to the environment.

It is submitted that with respect to matters of environmental nature contained in the Concurrent Legislative List, the States can validly make law in that area, except that such law must be in conformity with Federal Laws; otherwise it would be inconsistent and void.[407]Example of an area relating to environmental impact assessment in which a State has legislative competence includesagricultural development. State Governments have the powers to make laws with respect to industrial, commercial or agricultural development of the State including fishery.[408] Accordingly, with respect to those matters

[404] See: Chapter II of the Constitution of Federal Republic of Nigeria, 1999 (as amended). Strictly, the provisions of this chapter are termed non-justiciable provisions by the Constitution in s. 6(6) (c). this means that they are not subject of enforceability by court order).

[405]Constitution of Federal Republic of Nigeria, 1999, s. 20.

[406] Constitution of Federal Republic of Nigeria, 199, s. 3(1). It must however be noted that environmental pollution matters and other environmental impacts from certain projects which affect public health, agriculture among others are matters within the legislative competence of the State. It is also within the general powers of the State to make laws to enhance the general economic and social development of the State.

[407]Examples of such laws include the Environmental Sanitation Law, Vol. 3, Cap. 51, Laws of Rivers State of Nigeria, 1999; Forest Law, Vol. 3, Cap. 57, Laws of Rivers State of Nigeria, 1999; Noise (Control) Law, Vol. 4, Cap. 89, Laws of Rivers State of Nigeria, 1999 and Pollution Compensation Tax Law, Vol. 4, Cap. 96, Laws of Rivers State of Nigeria, 1999.

[408]Paragraph 20, Part II, Second Schedule to the Constitution.

relating to the environment under the Concurrent Legislative List, both Federal and State Government can make laws aimed atenforcing compliance with environmental impact assessment of projects as a way ofprotecting the environment.

2) **Categories of Projects that Require EIA**:[409] Strictly, the EIA Act stipulates certain projects for which an EIA must be carried out. For the purpose of carrying out an environmental impact assessment in Nigeria, projects have been categorized into three types, namely category 1, 2 and 3 projects. These categorisations are based on six criteria, namely: project magnitude; extent or scope; duration and frequency; associated risks; significance of impacts; and availability of mitigation measures for associated and potential impacts identified.[410]

Category 1 Projects: These are projects listed in the Schedule to the EIA Act for which full-scale EIA is mandatory.

Category 2 Projects: These are the same type of projects as in the mandatory list, except that the size and/or capacity of the category 2 projects are less than those of category 1. Strictly, where projects listed in category 2 are located in environmentally sensitive areas, they will be assigned to category 1 and subjected to full-scale EIA. On the other hand, where a category 2 project is not located in an environmentally sensitive area, a full-scale EIA may not be mandatory, but a partial EIA is required. In this case, mitigation measures or changes in project design (depending on the nature and magnitude of the environmental impacts or further action) may also be required from the proponents.

Category 3 Projects: These projects are essentially institutional development programs. Examples are institutional development, education, health, and family programs. These programmes shall be subject to full EIA process where they involve physical outputs such as buildings and ancillary facilities.Section 12 of the EIA Act

[409] Figure 1: Checklist for the Categorisation of Projects in EIA. Source: FEPA (1994) *infra*.
[410]F Olokesusi, Legal and Institutional Framework of Environmental Impact Assessment in Nigeria: An Initial Assessment (1998) ENVIRON IMPACT ASSES REV 1998;18:159–174 1998 Elsevier Science Inc., 655 Avenue of the Americas, New York, NY 10010.

enacts mandatory study list projects as those which must not be carried out without a report of the appropriate agency approving its kick-off. Where the agency gives certain conditions to be met or complied with, the project proponent must so comply.[411] Thus for these projects, any violation of the steps and procedures for an impact assessment would stall their execution with immediate effect. The specific projects for this purpose have been listed under what is termed 'mandatory list or activities' in the schedule to the EIA Act. They are as follows:

1.**Agriculture**:

(a) land development schemes covering an area of 500 hectares or more to bring forest land into agricultural production;

(b) agricultural programmes necessitating the resettlement of 100 families or more;

(c) development of agricultural estates covering an area of 500 hectares or more involving changes in type of agricultural use.

2. **Airport:**

(a) construction of airports (having an airstrip of 2,500 metres or longer);

(b) airstrip development in state and national parks.

3.**Drainage and irrigation**:

(a) construction of dams and man-made lakes and artificial enlargement of lakes with surface areas of 200 hectares or more;

(b) drainage of wetland, wild-life habitat or of virgin forest covering an area of 100 hectares or more;

(c) irrigation schemes covering an area of 5,000 hectares or more.

4. **Land reclamation:** Coastal reclamation involving an area of 50 hectares or more.

5. **Fisheries**:

(a) construction of fishing harbours;

[411] EIA Act, s. 12 headed 'Mandatory study list not to be carried out without the report of the Agency' further provides in subsection 2 that 'Where the Agency has given certain conditions before the carrying out of the project, the conditions shall be fulfilled before any person or authority shall embark on the project'.

(b) harbour expansions involving an increase of 50 percent or more in fish landing capacity per annum;

(c) land based aquaculture projects accompanied by clearing of mangrove swamp forests covering an area of 50 hectares or more.

6. **Forestry**:

(a) conservation of hill forest land to other land use covering an area of 50 hectares or more;

(b) logging or conversion of forest land to other land use within the catchment area of reservoirs used for municipal water supply, irrigation or hydro-power generation or in areas adjacent to state and national parks and national marine parks;

(c) logging covering an area of 500 hectares or more;

(d) conversation of mangrove swamps for industrial, housing or agricultural use covering an area of 50 hectares or more;

(e) clearing of mangrove swamps on islands adjacent to national marine parks.

7. **Housing**:Housing development covering an area of 50 hectares or more.

8. **Industry**:

(a) Chemical where production capacity of each product or of combined products is greater than 100 tonnes per day.

(b) Petrochemicals – all sizes.

(c) Non-ferrous Primary smelting, namely: Aluminium - all sizes; Copper - all sizes, and others producing 50 tonnes per day and above of product.

(d) Non-metallic Cement - for clinker throughput of 30 tonnes per hour and above; Lime - 100 tonnes per day and above burnt line rotary kiln or 50 tonnes per day and above vertical kiln.

(e) Iron and Steel Require iron ore as raw materials for production greater than 100 tonnes per day; or using scrap iron as raw materials for production greater than 200 tonnes per day.

(f) Shipyards Dead weight tonnage greater than 5000 tonnes.

(g) Pulp and paper industry - production capacity greater than 50 tonnes per day.

9. **Infrastructure:**

(a) construction of hospitals without falling into beach fronts used for recreational purposes;

(b) industrial estate development for medium and heavy industries covering an area of 50 hectares or more;

(c) construction of expressways;

(d) construction of national highways;

(e) construction of new townships.

10. **Ports**:

(a) construction of ports;

(b) port expansion involving an increase of 50 percent or more in handling capacity per annum.

11. **Mining**:

(a) mining of materials in new areas where the mining lease covers a total area in excess of 250 hectares;

(b) ore processing, including concentrating for aluminium, copper, gold or tantalum;

(c) sand dredging involving an area of 50 hectares or more.

12. **Petroleum**:

(a) oil- and gas fields development;

(b) construction of off-shore pipelines in excess of 50 kilometres in length;

(c) construction of oil and gas separation, processing, handling, and storage facilities;

(d) construction of oil refineries;

(e) construction of product depots for the storage of petrol, gas or diesel (excluding service stations) which are located within 3 kilometres of any commercial, industrial or residential areas and which have a combined storage capacity of 60,000 barrels or more.

13. **Power generation and transmission:**

(a) construction of steam-generated power stations burning fossil fuels and having a capacity of more than 10 megawatts;

(b) dams and hydro-electric power schemes with either or both of the following-

(i) dams over 15 metres high and ancillary structures covering a total area in excess of 40 hectares;

(ii) reservoirs with a surface area in excess of 400 hectares;

(c) construction of combined-cycle power stations;

(d) construction of nuclear-fuelled power stations.

14. **Quarries**:Proposed quarrying of aggregate, limestone, silica, quartzite, sandstone, marble and decorative building stone within 3 kilometres of any existing residential, commercial or industrial areas, or any area for which a licence, permit or approval has been granted for residential, commercial or industrial development.

15. **Railways**:

(a) construction of new routes;

(b) construction of branch lines.

16. **Transportation**:Construction of mass rapid transport projects.

17. **Resort and recreational development**:

(a) construction of coastal resort facilities or hotels with more than 80 rooms;

(b) hill station resort or hotel development covering an area of 50 hectares or more;

(c) development of tourist or recreational facilities in national parks;

(d) development of tourist or recreational facilities on islands in surrounding waters which may be declared as national marine parks.

18. **Waste treatment and disposal:**

(a) toxic and hazardous waste-

(i) construction of incineration plant;

(ii) construction of recovery plant (off-site);

(iii) construction of waste water treatment plant (off-site);

(iv) construction of secure landfill facility;

(v) construction of storage facility (off-site);

(b) municipal solid waste-

(i) construction of incineration plant;

(ii) construction of composing plant;

(iii) construction of recovery/recycling plant;

(iv) construction of municipal solid waste landfill facility;

(c) municipal sewage –

(i) construction of waste water treatment plant;

(ii) construction of marine outfall.

19. **Water Supply**:

(a) construction of dams, impounding reservoirs with a surface area of 200 hectares or more;

(b) groundwater development for industrial, agricultural or urban water supply of greater than 4,500 cubic metres per day.

From the foregoing listing of projects that require mandatory EIA, three broad categories can be deciphered.The first mandatory category considers projects bordering on agriculture/agro allied industry and manufacturing. Thus, environmental impact

assessment is compulsorily for any building, infrastructure, manufacturing or industrial activity in relation to agricultural production and agro allied products. Examples include:

a) Processing of food, beverage, tobacco;

b) Construction of infrastructure, such as: ports, housing, airport, drainage and irrigation, railway;

c) Transportation: resort and recreational development;

d) Power generation;

e) Petroleum, mining, quarries;

f) Waste treatment and disposal;

g) Water supply;

h) Land reclamation; and

i) Brewery.

The second mandatory category relates to agriculture/rural development projects, namely:

a) Reforestation/ afforestation project;

b) Small scale irrigation,

c) Small scale aquaculture, saw milling, logging,

d) Rubber processing,

e) Fish processing,

f) Construction of industry/infrastructure such as: mini-hydropower development, any small scale industry development, eg textiles, chemical industry, power transmission, renewable energy development, telecommunication facility, rural water supply, public hospitals, road rehabilitation.

g) Any form of quarry or mining.

The third mandatory category relates to projects bordering on institutional development, health, family planning, nutritional and educational programmes.

3) **Other cases where environmental assessment is required**: Apart from the listing of specific projects for which EIA is mandatory, The EIA Act also enacts determining

parameters for the purpose of carrying out an impact assessment. These parameters are provided in section 13 of the EIA Act. Accordingly, any project which the Federal, State or Local Government is the proponent, supervisor, sponsor, guarantor, or licensor either in whole or part must necessarily require an environmental impact assessment.[412]

4) **Excluded projects**:By section 14 of the EIA Act, certain projects are excluded from the requirement of environmental impact assessment, usually for the interest of the deserving public. Examples of determinants of such projects for which an environmental impact assessment shall not be required are listed as follows:

(a) projects carried out during national emergency for which temporary measures have been taken by the Government; for example construction of temporary structures for the housing of internally displaced persons as a result of insurgency in any State.

(b) projects carried out in response to the interest of public health or safety, for example the construction of Ebola centres for the containment of the persons found with the dreaded virus to tackle it from further spread.

(c) environmental effects of the project are likely to be minimal in the opinion of the Federal Ministry of Environment, NESREA, or the President.[413]

It must be emphasised that the provisions of the Act to the effect that projects over which government performs a duty or exercises power are exempt from assessment is anathema to the core aim of environmental sustainability.[414]It is viewed that no matter the extent of exercise of executive powers, projects which fall under those for which an impact assessment is mandatory, the authorities, including the President should comply.

[412]EIA Act, s. 13 (a) – (d).
[413] These authorities which determine whether the environmental impact of the project will be minimal may however be compromised where corruption thrives and money determines weight of evidence in trading sincerity and integrity.
[414] EIA Act, s.14(2).

Categorisation of Project for the Purpose of Environmental Impact Assessment in Nigeria

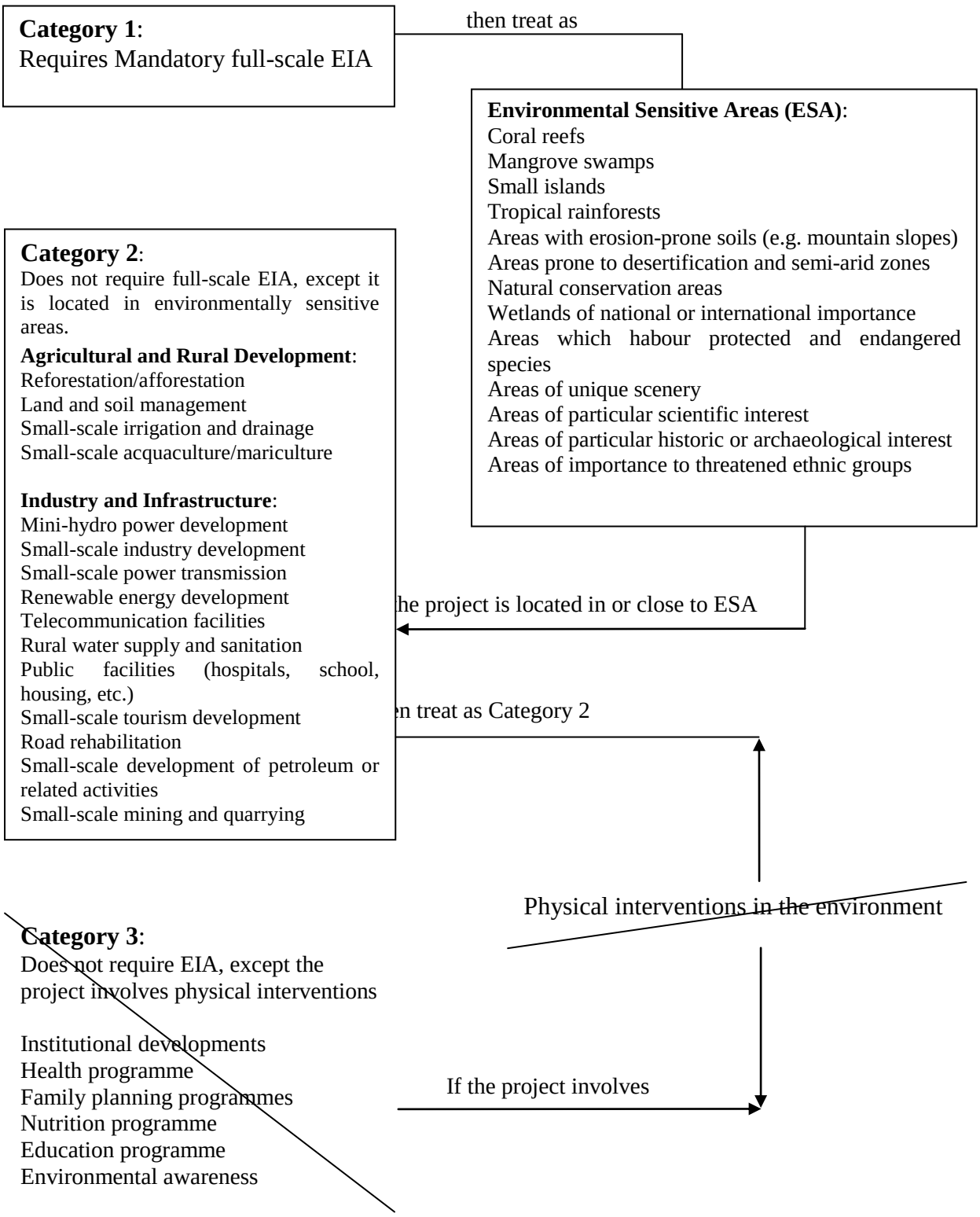

FIGURE 1: Checklist for the categorisation of projects in EIA. Source: FEPA (1994)

5) **Restriction on public or private project without prior consideration of the environmental impact:** This requirement is enacted by section 2 of the EIA Act. It provides that both the public and private sector shall not undertake any projects without considering at its early stage the environmental effects. Early stage here implies that once any person imagines of any projects or investment, which he thinks would be for use or service to the public, he must consider the need to carry out an environmental impact assessment of the site/location and the impact such investment would have on the immediate and extant environment. Thus, he should after identifying a location for the project (but before outright purchase of the said site) go to the regulatory authority on environmental impact assessment.

It would appear that by the provision of the EIA Act, the procedure is to apply in writing to the Federal Ministry of Environment through the Agency[415] called National Environmental Standards and Regulations Enforcement Agency (NESREA). Although in practice, the proponent of a project applies directly to the Federal Ministry of Environment.This means that despite the repeal of Federal Environmental Protection Agency Act by the NESREA Act, the Federal Ministry of Environment still plays the roles of the Agency which ordinarily would have been that of the Agency created under the EIA Act – that is, NESREA. Viewed differently, it is advisable for the proponent to go to NESREA office in the project State from where he will be clarified about the project and be directed to the appropriate Federal Ministry (ie of Environment), which actually drives the process of the impact assessment; otherwise he may on his own confuse State Ministry of Environment with that of the Federal, and in the end spend double or more for the same process.

6) **Identification, etc., of significant environmental issues:** This is expected to be done at the earliest stage possible before embarking on the project execution. It is enacted by

[415]This is because of the clear provisions of the EIA Act, s. 61(1) to the effect that the term 'Agency' means the agency established by the 'Federal Environmental Protection Agency Act'. However, since FEPA Act has been repealed by the NESREA Act, the agency automatically became the NESREA.

section 3 of the Act. The possible environmental issues must first be identified and studied. In practice, it is the Federal Ministry of Environment (hereafter conveniently referred to as FME) that clarifies a project proponent of what to do. In most cases, the FMEwould help the proponent to go through a checklist to know if the proposed project falls under the category of projects for which an impact assessment is required. After identifying the proposed project under any category, the proponent is further advised on how to go about identification of the environmental issues bordering on the project and carry out a study on them.

3.2.1 **The Environmental Impact Assessment Process/Stages**:

1) **Minimum content of environmental impact assessment:** It is a requirement under the EIA Act to prepare for every environmental impact assessment process, a brief and non-technical summary or documentation of the necessary information on the proposed project or activity.[416] The content of the summary shall include at least the consideration of the following issues, that is –

(i) description of the proposed project or activities;

(ii) description of the potential environmental effect of the proposed project or activities, including specific information necessary to identify and assess the effects;

(iii) description of the practical activities, as appropriate;

(iv) assessment of the likely environmental impacts of the proposed activity and the alternatives, including the direct or indirect cumulative, short-term and long-term effects;

(v) identification and description of measures available to mitigate adverse environmental impacts of proposed activity and assessment of those measures;

[416] EIA Act, s.4.

(vi) indication of gaps in knowledge and uncertainty which may be encountered in computing the required information;

(vii) indication of whether the environment of any other State or local government area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives.

(viii) detailed degree of environmental significance of the proposed project, ie an appropriate assessment of the environmental effects of the project with the corresponding or likely environmental significance.[417]

2) **Examination of environmental impact assessment information by the appropriate Agency**: The brief summary information of the study carried out on the proposed projects and the likely environmental effect is submitted to the Federal Ministry of Environment (FME), following which the agency (ie FME) examines the brief summary impartially before making any decision regarding the proposal (whether in favour or adverse thereto).[418]

3) **Opportunity for comments by certain groups:** Before the Agency gives a decision on the proposed activity for which a brief summary of its environmental assessment has been produced, the Agency shall give opportunity to other government agencies, members of the public, experts in any relevant discipline and interested groups to make comments on the environmental impact assessment of the activity.[419]

4) **Need for comprehensive environmental impact assessment of the project**: After the opportunity for comments and the Agency is of the view that there is need for a

[417] EIA, s. 5
[418] EIA Act, s. 6
[419] EIA Act, s. 7

comprehensive environmental impact assessment of the proposed project, it shall constitute a screening and mandatory study panels.[420]

5) **Screening Panel**: This panel conducts the screening of the proposed project in order to ascertain a holistic significance of the proposed vis-à-vis its impact on the environment. Screening is specifically conductedfor the FME to ascertain which categories of projects the proposed project falls under. In practice, the FME would issue to the project proponent a checklist of its accredited consultants. Once the proponent elects any of the consultants, the FME delegates its duty of conducting the screening exercise to such consultant as terms of reference. This delegation of duty by the FME is allowed under the law.[421] At the conduct of the screening, the FME ensures that the public is afforded an opportunity to examine and comment on the screening report and any record that has been filed in the public registry established in respect of such project (usually an Official Gazette which stipulates the conditions or requirements of such type of projects).[422] Any comments filedshall be taken into consideration.Where theFME is of the opinion that the project is not described in the mandatory study list or any exclusion list, it shall ensure that- (a) a screening of the project is conducted; and (b) a screening report is prepared.[423] Strictly, any available information as presented by the project proponent may be used in conducting the screening of the proposed project. However, where the FME is of the opinion that the information available is not adequate to enable it to conduct the screening exercise, it shall ensure that any study and information that it considers necessary for that purpose are undertaken or collected.[424]

5i) **Mandatory study list**: Unlike mere screening, where the Agency is of the opinion that a project is described in the mandatory study list, the Agency shall ensure that a mandatory

[420] EIA Act, s. 8 read together with s.15(a).
[421]EIA Act, s.17. Note however that the Agency cannot delegate its duty of authorizing or approving the commencement of the project. See EIA Act, ss.21(1)(a) and 39(1)(a) .
[422] EIA Act, ss. 7 and 51 respectively.
[423]EIA Act, s. 18(1).
[424] EIA Act, s.18(2).

study is conducted, and a mandatory study report is prepared and submitted to the Agency,[425]which shall consequently refer the project to the Council for a referral to mediation or a review panel.[426]

5ii) **Decision of the Agency after submission of screening report**: After completion of a screening, the report is presented to the Agency. Where the Agency is of the opinion that the proposed project is not likely to cause significant adverse environmental effects; or that any effect caused can be mitigated, it would in exercise of its duty and function permit the project to be carried out and ensure that any mitigation measures that it considers appropriate are implemented.[427]

Where, in the opinion of the Agency, the project is likely to cause significant adverse environmental effects that cannot be mitigated, the Agency shall not exercise any power or perform any duty or function conferred on it under any enactment that would permit the project to be carried out in whole or in part.[428] In other words, where, in the opinion of the Agency, the project is likely to cause significant adverse environmental effects that may not be mitigable; or public concerns respecting the environmental effects of the project warrant it, the Agency shall refer the project to the Council for a referral to mediation or review panel.

5iii) **Decision of the Council after submission of a mandatory study report**:[429] Notably, in respect of projects for which screeninghas been conducted, the screening report is submitted to the FME, which takes decision on the screening report. However, for projects requiring mandatory study, the report is submitted to the FME, which transmits same to the enlarged Council, to take decision after due consideration of the mandatory study report. While the FME can take a decision with respect to a screening report, the

[425]EIA Act, s.12.
[426] EIA Act, s.35.
[427] EIA Act, s.21(1)(a) and (2).
[428]EIA Act, s.21(1)(b).
[429]Mandatory Study Reportmeans a report of a mandatory study that is prepared in accordance with the provisions of the EIA Act or any regulation made under the Act. See EIA Act, s.61.

Council takes decision on a mandatory study report. However, the mandatory study report may be referred back to the FME to take decision on it; subject only to where the Council is of the opinion that the project is not likely to cause significant adverse environmental effects; or that any such effects can be mitigated.[430]

Conversely, the Council shall refer the project to mediation or a review panel where it is of the opinion that the project is likely to cause significant adverse environmental effects that may not be mitigable; or that public concerns respecting the environmental effects of the project warrant such referral.[431] Notice the distinction between the terms, 'referral to Council'[432] and 'referral by Council'.[433]Whilst referral to Council is made by the FME, referral by the Council is made to a mediation or review panel, albeit usually after consultation with the FME. In other words, the chain of reference is thus: the Agency refers to the Council, while the Council refers to mediation or review panel. In each case, before the referral is made, it must be the opinion that the project is likely to cause significant adverse environmental effects that may not be mitigable; or that public concerns respecting the environmental effects of the project warrants the referral.

6) **Reference to Mediation**: Where the Agency is of the opinion that the proposed project is likely to cause significant adverse environmental effects; and the project has been classified under the mandatory study list,it may be referredfor mediation.[434]It is the exclusive preserve of the Council to decide when to refer a project to mediation or review panel. Reference to mediation is made, if the Council is satisfied that –(a) the parties who are directly affected by or have a direct interest in the project have been identified and are

[430]EIA Act, s.25(b).
[431]EIA Act, s.25(a).
[432]EIA Act, s.26.
[433]EIA Act, s.29.
[434]EIA Act, s.27

willing to participate in the mediation through representatives; and (b) the mediation is likely to produce a result that is satisfactory to all of the parties.[435]

Where a project is referred to mediation, the Council shall, in consultation with the Agency appoint as mediator any person who, in the opinion of the Council, possesses the required knowledge or experience; and fix the terms of reference of the mediation.[436]It is however doubtful if the parties for the mediation would readily accept the mediator elected by the Council. Thus, it is opined that an amendment to the Act that allows parties to appoint their mediator, albeit with some underlying qualifications as criteria would better serve the end of justice or the purpose of mediation, in ending a dispute.

7) **Assessment by Mediation**:[437]A mediator shall not proceed with a mediation unless the mediator is satisfied that all of the information required for a mediation is available to all of the participants. The mediator shall, in accordance with the terms of reference of the mediation and provisions of the Act do the following:

(a) help the participants to reach a consensus on:the environmental effects that are likely to result from the project;any measures that would mitigate the significant adverse environmental effects; appropriate follow-up programme;

(b) prepare a report setting out the conclusions and recommendations of the participants; and

(c) submit the report to the Council and the Agency.

However, after a project has been referred to mediation and the Council is of the opinion that the mediation is not likely to produce a result that is satisfactory to all of the

[435]EIA Act, s.30(a).
[436]EIA Act, s.31.
[437]EIA Act, s.33.

parties, the Council may terminate the mediation and refer the project to a review panel.[438]

8) **Appointment of a review Panel**:[439] Where the Agency is of the opinion that the proposed project is likely to cause significant adverse environmental effects; such project is described to fall under the mandatory study list, which the Agency shall refer to a review panel, established by the Council for such purpose.In practice, the Council is composed basically of the Honourable Minister of Environment and other members appointed by him, without prejudice to the following:

(a) a Chairman who shall be appointed by the President, on the recommendation of the Minister;

(b) the Permanent Secretary of the Federal Ministry of Environment or his representative;

(c) a representative each, not below the rank of Director from the –

(i) Federal Ministry of Solid Minerals Development,

(ii) Federal Ministry of Agriculture and Natural Resources,

(iii) Federal Ministry of Water Resources,

(iv) Federal Ministry of Science and Technology,

(v) a representative of the Standards Organisation of Nigeria,

(vi) a representative of the Manufacturers‘ Association of Nigeria,

(vii) a representative of the Oil Exploratory and Production Companies in Nigeria;

In selecting or appointing members of the review panel, the Council shall, in consultation with the FME appoint as members of the review panel including the chairman thereof,

[438]EIA Act, s.34
[439]EIA Act, s.35

persons who, in the opinion of the Council, possess the required knowledge or experience; and fix the terms of reference of the panel.[440]

9) **Assessment by the review panel**:[441] The review panel that has been appointed shall, in accordance with its terms of reference and provisions of the Act do the following:

(a) ensure that the information required for an assessment by a review panel is obtained and made available to the public;

(b) hold hearing in a manner that offers the public an opportunity to participate in the assessment;

(c) prepare a report setting out- (a) the conclusions and recommendations of the panel relating to the environmental effects of the project and any mitigation measures or follow-up programme; and (b) a summary of any comments received from the public; and

(d) submit the report to the Council and the Agency.

A review panel has the power to summon any person to appear as witness before the panel to give evidence, orally or in writing; and produce any documents the panel considers necessary for conducting its assessment of the project.[442]Furthermore, a review panel has power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and other things as is vested in the Federal High Court or a High Court of a State.[443] The hearing by a review panel shall be in public, unless the panel is satisfied after representation made by a witness that specific, direct and substantial harm would be caused to the witness by the disclosure of the evidence, documents or other things. Consequently, such disclosure by the witness shall be

[440] EIA Act, s.35(a) and (b).
[441]EIA Act, s.36.
[442] EIA Act, s.37.
[443]Any summons issued or order made by a review panel pursuant to subsection (1) of this section may, for the purposes of enforcement, be made a summons or order of the Federal High Court by following the usual practice and procedure. See EIA Act, s.37(5). This presupposes *subpoenaducestecum* and *subpoenaadtestificandum*.

classified as privileged and shall not without the authorisation of the witness, knowingly be or be permitted to be communicated, disclosed or made available by any person who has obtained the evidence, documents or other things pursuant to the Environmental Impact Assessment Act. It is however doubtful whether this exercise of power of subpoena by a review panel is appropriate, since it is not a Court of law as recognised by the Constitution.

Thus, in view of the powers of a review panel, it is opined that rather than instituting actions bordering on Environmental Impact Assessment Act in the High Court, the Panel could be upgraded as a specialised court for the fast tracking of such actions.

10) **Joint review panel**:[444] Where any proposed project involves: (a) the government of a foreign State or of a subdivision of a foreign State, or any institution of such a government; or (b) an international organisation of States or any institution of such an organisation, the Council and the Minister of External Affairs may in place of a review panel establish a review panel jointly with jurisdiction to conduct an assessment of the environmental effect of the project or any part of it.[445] The assessment conducted by the joint review panel shall be deemed to satisfy any requirements of the Act respecting assessment by a review panel.[446] To appoint a joint review panel, the Council does the following:

(a) may appoint or approve the appointment of the chairman or a co-chairman and one or more other members of the panel;

(b) may fix or approve the terms of reference for the panel;

(c) the public shall be given an opportunity to participate in the assessment conducted by the panel;

(d) on completion of the assessment, the report of the panel shall be submitted to the Council; and

[444] EIA Act, s.43.
[445]EIA Act, s.42.
[446]EIA Act, ss.43(5) and 46.

(e) the panel's report shall be published.

The Council may approve the substitution of a process for an environmental assessment by a review panel,where it is of the opinion that the process is also followed by a Federal authority pursuant to another enactment of the National Assembly other than the EIA Act.[447]Thus, with respect to land claims agreements, a review panel or joint review panel may be substituted with any appropriate body or authority established to exercise the duties or functions of conducting an assessment of the environmental effects of the project.[448] The conditions for approving a substitute for review panel consideration must be had as to whether the Agency has complied with its duty to ensure that notice has been given to the neighbouring States or local government areas of the significant impacts of the proposed project.[449] The consultations of the Agency with the affected States and local government areas must be aimed at investigating any environmental hazard that may occur during the construction or process of the proposed project or activity.[450]Consequently, the public must be given opportunity to participate in the assessment by being adequately informed through publication in national or widely read newspapers and radio or television announcements as the case may be. At the end of the assessment, a report must be submitted to the Council; and thereafter the report must be published.

Other instances where a review panel may be constituted: A review panel may be constituted in respect of projects capable of having inter-State or international environmental effects.[451]In this sense, even though the project is not contained in the mandatory study list for which an environmental assessment is required, but the President is of the opinion that such project is capable of causing serious adverse environmental

[447]EIA Act, s.44.
[448]EIA Act, s.42(d).
[449]EIA Act, s.45.
[450]See EIA Act, s.11.
[451] EIA Act, s.48.

effects outside Nigeria and on Federal lands, the FME and the Minister for Foreign Affairs may establish a review panel to conduct an assessment of the international environmental effects of the project. At least ten days before establishing the review panel, the FME with the approval of the President, shall give notice of the intention to establish a panel to- (a) the proponent of the project; (b) the government of any State in which the project is to be carried out or that is adjacent to Federal lands on which the project is to be carried out; and (c) the government of any foreign State in which, in the opinion of the Minister for Foreign Affairs, serious adverse environmental effects are likely to occur as a result of the project.

Similarly, where the President is of the opinion that a project traversing two or more States or local government areas in the country is likely to cause serious adverse environmental effects on Federal lands or on lands in respect of which a State or local government has interests, the FME or the President may establish a review panel to conduct an assessment of the environmental effect of the project on and outside those lands.[452] At least ten days before establishing the panel the Agency shall give notice of it to the proponent of the project and to the governments of all interested states.

11) **Notification to potentially affected States or local government area, etc.** It is the duty of the review panel prior to its carrying out the assessment exercise to ascertain whether notice has been giving to the neighbouring States or local government areas of the significant impacts of the proposed project. Thus, where there is an indication that the environment within another State in the Federation or a local government area is likely to be significantly affected by the proposed project or activity, the State or the local government area in which the activity is being planned, shall, after due consultation with the Agency and to the extent possible –

(a) notify the potentially affected State or local government of the proposed activity;

[452] EIA Act, s.49.

(b) transmit to the affected State or local government area any relevant information of the environmental impact assessment;

(c) enter into timely consultations with the affected State or local government.

It shall be the duty of the Agency to ensure that notice has been given to the neighbouring States or local government areas of the significant impacts of the proposed project. The Agency subsequently may cause the consultations with the affected States and local government areas to take place in order to investigate any environmental derogation or hazard that may occur during the construction or process of the proposed project or activity.[453]

12) **Public Notice**: Requirement of public notice of the environmental impact assessment process is enacted by sections 24 and 38 of the EIA Act. After receiving a mandatory study report in respect of a project, the Agency allows for public comments about the report in relation to the proposed project. This report is referred to as the 'environmental impact assessment draft report'. The Agency makes publication of a notice to the public, in any manner or medium it considers appropriate, setting out the following information:

(a) the date on which the mandatory study report shall be available to the public;

(b) the place at which copies of the report may be obtained; and

(c) the deadline and address for filing comments on the conclusions and recommendations of the report.

Prior to the deadline set out in the notice published by the FME, any person may file comments with the FME relating to the conclusions and recommendations of the mandatory study report.[454] The public comments on this mandatory study report (otherwise called the EIA Draft Report) are submitted to the Council through the office of

[453] EIA Act, s.11(1) and (2).
[454] EIA Act, s.24.

the Honourable Minister of Environment which refers the report further to a mediator or review panel for further critical analysis.

On receiving the report submitted by a mediator or a review panel, public notice of the draft report is made again. The FME makes the report available to the public in any manner the Council considers appropriate and shall advise the public that the report is available for their further comments or inputs.[455] After incorporating the comments and inputs to the draft report, the report is at the instance of the Honourable Minister of Environment deliberated upon in a closed door meeting of the experts and the representatives of the FME who participated in the critical analysis of the draft report. The outcome of this meeting is the over-all grading or assessment of the report, which could lead to outright rejection of the report for being below expectation, recommendation for improvement, or the approval of the report for publication as a final copy.

13) **Decision of the Agency following the submission ofan environmental impact assessment**: Strictly, all communication to, with and from the FME must be in writing. From the stage of applying for the conduct of an environmental impact assessment of a proposed project to the final consideration stage of approval or refusal of the project, the means of instruction and decision by the Agency must be in writing. Prior to any decision to be made by the Agency on environmental impact assessment, the information provided must be examined thoroughly.[456]Thus, before the FME gives a decision on an activity to which an environmental assessment has been conducted, it must have given opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comments on the environmental impact assessment of the activity.[457]

[455]EIA Act, s.38.
[456] EIA Act, s.6.
[457]EIA Act, s.7.

Specifically, the Act enacts that the decision on the effect of an environmental impact assessment must be in writing, stating the reasons, including the provisions, to prevent, reduce or mitigate damage to the environment. The report of the FME shall be made available to any interested persons or groups. Where there are no interested persons or groups' request for the report, it shall be the duty of the Agency to publish its decision in a manner by which members of the public or persons interested in the activity shall be notified. The Council may determine an appropriate method in which the decision of the Agency shall be published so as to reach interested persons or groups, in particular the originators or persons interested in the activity.[458]

Section 39 of the EIA Act enacts what should guide the decision of the Agency following the submissionof a report by a mediator, a review panel or the referral of a project back to the Agency by the Council. After completion of the mandatory study list by the review Panel, the report is presented to the Agency. Where the Agency is of the opinion that the proposed project is not likely to cause significant adverse environmental effects; or that any effect caused can be mitigated, it would in exercise of its duty and function permit the project to be carried out and ensure that any mitigation measures that it considers appropriate are implemented.[459]

However, where, in the opinion of the Agency, the project is likely to cause significant adverse environmental effects that cannot be mitigated, the Agency shall not exercise any power or perform any duty or function conferred on it under any enactment that would permit the project to be carried out in whole or in part.[460] An aggrieved proponent may however be encouraged to chart a new course for another project that would not cause adverse impacts that cannot be mitigated.

14) **Issuance of Certificate**: Approval for a project after successful conduct of an environmental impact assessment is issued in form of a certificate. In practice, the

[458]EIA Act, s.9.
[459] EIA Act, s.39(1)(a) and (2).
[460]EIA Act, s.39(1)(b).

certificate is signed by the Federal Ministry of Environment. On the certificate is stated the Environmental Impact Statement (EIS) Certificate which is to the effect that an environmental assessment of the project has been completed, and subject only to the stipulated terms and conditions as stated on the certificate.[461] The project proponent then presents a copy of the certificate to the National Environmental Standards and Regulations Enforcement Agency, which would issue him with a certificate of compliance with the EIA process. In the absence of compliance with the EIS, the project may be stalled or the proponent fined heavily.

In *Hellos Towers v NESREA &Ors*[462] the Court of Appeal, Kaduna Division upheld that 'NESREA is the statutory body established by the National Assembly to replace the Federal Environmental Protection Agency [FEPA] and the body entrusted with the enforcement of environmental standards and regulations in Nigeria. It is therefore the body that is vested with powers to issue Environmental impact assessment certificate'.

15) **Supervision of the Activity by the Council**: Where after the conduct of an environmental impact assessment for a project, an approval is given by the Council, it does not end there. The Council through its regulatory bodies supervises the project and its effects as they unfold. Thus, all projects for which approval had been given shall be subject to appropriate supervision.[463] The supervision is usually done toassist the FME in its yearly compilation of the total environmental effects of projects in Nigeria in order to prepare the statistical summary of those effects.[464] During each year, the FMEkeeps a statistical summary of all the environmental assessments undertaken or directed by it and all courses of action taken, and all decisions made, in relation to the environmental effects of the projects after the assessments were completed. Consequently, the Agency ensures

[461] EIA Act, s.41.
[462] *Unreported Appeal No: CA/K/123/2010*
[463] EIA Act, s.10.
[464] EIA Act, s.56.

that the summary for each year is compiled and completed within one month after the end of that year.

Furthermore, the supervision is done to ensure that the project proponent is complying with the terms and conditions of the project approval. This is where the National Environmental Standards and Regulations Enforcement Agency comes in. The Council through NESREA monitors the activities of project proponents, and whenever they deviate from the terms and conditions for the approval as contained in the environmental impact statement (EIS), punitive measures apply. NESREA would either seal the project site/premises thereby halting the project or activity or impose heavy fines on the erring proponent. Strictly, the power to prohibit a project for non-compliance with an Environmental Impact Statement is conferred on NESREA. Consequently, NESREAcan prohibit aproject proponent from carrying out the project, in in whole or in part until the Agency is satisfied that any adverse effects have been mitigated. The proponent would be prohibited continually, until the assessment is completed and NESREA is satisfied that the project is not likely to cause any serious adverse environmental effects or that any such effects shall be mitigated or are justified in the circumstances.[465]

Violation of the prohibition order of the President or the NESREA attracts a Court injunction on the application of the NESREA.[466] At least 48 hours before an injunction is issued, notice of the application shall be given to the proponent or persons named in the application unless the urgency of the situation is such that the delay involved in giving such notice would not be in the public interest. It is sufficient that the contravention is imminent, meaning that it must not have been contravened but the steps of the proponent indicate that the requirement of the EIA process is about to be contravened. With respect to the prohibition on the Order of the President, the Court may issue an injunction

[465]EIA Act, s.51(2).
[466]EIA Act, s. 52.

ordering any person named in the application to refrain from doing any act or thing that would commit the proponent to ensure that the project or any part thereof is carried out until the assessment of the environmental effects of the project referred is completed and the NESREA is satisfied that the project is not likely to cause any serious adverse environmental effects or any such effects shall be mitigated or are justified in the circumstance.

3.3 **Analysis of the EIA process in Practice**:[467]

In practice, there is a wide deviation from the enactment of the Act. The researcher is grateful to the Federal Ministry of Environment Controller in Port Harcourt, Rivers State.[468]The said Controller was very receptive and cordial in making available useful materials, which materials are duly acknowledged wherever referenced.

The practical EIA processes in steps/stages involve the following:

1) **Project Conceptualization**:A particular location for a project may be determined by studying the map of such area. Having understood the map and composition of the ecosystem of the particular location, a project proponent may make up his mind on the possibility of commencing the project. Consequently, the proponent makes the move to acquire land in that location and thereafter approaches the Federal Ministry of Environment to commence the EIA process.

2) **Visit to the Federal Ministry of Environment**: At this second stage, the project proponent embarks on a visit to the office of the Zonal Controller, Federal Ministry of Environment to apply for the EIA registration processes for his proposed projects. Accordingly, the proponent is issued the necessary forms to fill or complete. The forms are subsequently submitted to the Ministry.

[467]Refer to figure 2: Environmental Impact Procedure in Nigeria. Source: FEPA (1994) *infra*.
[468]4th Floor, Federal Secretariat Complex, Port Harcourt/Aba Express Way, Port Harcourt, Rivers State on Tuesday, February 9, 2016 at about 1:49 pm.

3) **Submission of EIA registration and project proposal forms**: The project proponent submits the EIA registration forms along with the document containing his proposed project and receipts of payment of the requisite fees, for EIA process permit. At this juncture, it becomes obvious that the project proponent is resolute, determined and ready to proceed with the process of EIA for his project.

4) **Screening**: This is done in order to identify with the community in which the project would be sited. For example, if the project is to be sited in a village, the proponent meets with the chiefs, men, women, youths, non-governmental organizations of that community. This gathering is aimed at categorizing the project based on the likely environmental sensibility or effects which the project is capable of causing. At the gathering, the proponent presents or says what the project is all about and what is intended to be done or achieved. Consequently, the community representatives are given opportunity to express their views on the project. Where for instance the road to the land on which the project is to be sited passes through community shrine or sacred bush, the proponent would be advised to chart another route to the project location. It could also be suggested to the project proponent that the proposed location or situ of the project is very close to the community stream, their only source of water or that the equipment should not pass through the water in order not to contaminate it. As such, the proponent would be advised to chart an alternative route to the location, or an entirely new location; otherwise it would cost him more to provide portable water for the community, an infrastructure which is capital intensive.

5) **Site verification**: This involves the presence of representatives from the Federal Ministry of Environment, State Ministry of Environment and the corresponding Agency on environmental issues at the Local Government level. Where the proposed project traverses or cuts across more than one Local Government Area or State, the stakeholders/representatives from the affected territories would be involved in the

process. The site verification is done to ensure that nothing has commenced on the land. Even clearing of bush or grass on the land should not have been done or commenced. If site clearing had been done, the project proponent is fined the sum of ₦250,000.oo with written apologies to the authorities at all levels/tiers of government as afore-mentioned, particularly the Federal Ministry of Environment.

6) **Scoping**: This is done to identify the key issues of concern on the project at the earliest stage possible. Undoubtedly, scoping saves both time and money of the project proponent by allowing for public participation in the EIA process. The public would be allowed to critique or criticize the project or the location of the project. All criticisms or appraisals of the project must be geared towards the environmental effects of the project. As in the screening stage, all participants would be invited to determine the depth and terms of reference to be addressed alongside the environmental statement. At the stage of scoping, if the opinion is that the project may not adversely affect the environment, the proponent is issued with the permit to proceed albeit on the recommendation of the Honourable Minister of Environment. Conversely, if otherwise, the Agency will approve the actual Environmental Impact Study (EIS) to be conducted.

7) **Actual or full Environmental Impact Study**: This involves going to the field or site of the proposed project to take samples from the direct location and adjourning environment. A list of experts who are accredited consultants and accredited laboratories of the Federal Ministry of Environment is presented to the proponent. Where the proponent opts for any of the consultants, they are duly consulted. Being a multi-dimensional approach, more than one consultant are usually consulted and engaged based on their discipline or area of specialty. The regulatory agencies, as well as draft-persons are also involved in the process. Experts from universities in different areas of disciplines are involved, as well as the ministries of environment of the Federal, State and Local Government levels and native people from the locality or immediate environment, situ of

the project. Sample of soil, to test for the organisms, aquatic and plant life therein; samples of air are collected to test for the air quality and measuring the weather elements such as: rainfall, temperature, humidity, and wind. Notably, the Nigerian Meteorological Agency (NIMET) is accredited to measure weather elements.

Other samples collected for actual environmental study include: surface water to test for the organisms therein; noise and sound samples to test for their effects (vibration). By extension, samples of other living organisms and plants are also taken, as well as other socio-cultural elements such as items from the physical surrounding environment of the project site. Collection of all these samples is referred to as 'data gathering' for the purpose of conducting a base-line study.

The baseline study helps to compare any variation or alteration to the environment arising from the activities of the project in future, where the project scales through approval. For example, if after the commencement of the project or activity, an outbreak of disease, ailment or pollution occurs; new or fresh samples from the environment are taken again to compare with the result from the baseline study carried out earlier, before the commencement of the project. If there is any significant change after the comparison, the conclusion would be that the ailment or pollution is attributable to the project activity.

To conduct a baseline study, the collected samples are taken to accredited laboratories for analysis. There must be a chain of custody of the collected samples which must not be altered in any way. For sample collection offshore, the ship must have the necessary and appropriate equipment to preserve the samples, i.e. refrigerator. Interestingly, some ships do have sophisticated equipment that does the analysis almost immediately after taking the samples.

Part of the socio-cultural samples is taking of photographs, including: photographs of group discussion, roads, health facilities, portable water scheme, stream

or river, vegetation, fish, wild life, etc. Also contained in the socio-cultural data sampling is the proponent's undertaking or agreement of how to engage the locals (natives) of the community in both skilled and unskilled labour. If no locals have the requisite qualification for skilled labour, they are employed as unskilled labour with an agreement that they would be sent on trainings to become skilled, so as to be subsequently engaged as skilled labour.

8) **Presentation of EIA Draft Report**: After the gathering of all the samples, the consultants go back to conduct the analysis of the various samples. The results of the analysis are compiled into a single document called the 'Environmental Impact Assessment Draft Report'. This report is submitted to the office of the Honourable Minister of Environment. On receipt of the draft report, the Honourable Minister directs it to the Director heading the Environmental Assessment Department. After evaluating the report the Director relates back to the Honourable Minister suggesting to him the accredited consultants to engage to review the draft report. Thereafter, the Minister chooses experts in the related area of the project, namely: engineers, hydro biologists, chemists, etc. These experts are consulted to carry out a review of the EIA draft report. Enough time is given for the purpose of reviewing a draft report. The draft report is circulated to the Ministries of Environment of the Federal, States and Local Government Areas.

9) **Review of the EIA Draft Report**: After circulating the EIA draft report, it is displayed by the Federal Ministry of Environment (FME) to the public for a period of 21 days. The State Ministry of Environment and related Local Government Area Authority are also mandated by the FME to display the draft report and make it accessible to the public for 21 days. Other media of publicity are newspapers, radio and television. It is important to emphasize that failure to display the draft report could result in the non-involvement or

non-participation of non-governmental organizations and communities directly affected by the project in the EIA process.

To make the EIA draft report review credible people must be allowed to make photocopies of the consultant's draft report, criticize it and make their inputs. The date of the public review as is expected is usually announced on the mass media, namely: newspapers, radio and television announcements. On the report review date, participants are drawn from among universities, community representatives, representatives of the Minister of Environment, representatives of the State Commissioner for Environment and the project proponent.

Prior to the actual or main day of the review, another site visit is embarked upon. This visit enables participants to view the site from which the EIA that brought about the draft report was got. On the actual review day, the project proponent makes presentation of the aims and objectives of the project. Consequently, participants would ask questions and make comments based on their various individual opinions or views. Before the presentation by the project proponent and the comments by participants, the representatives of the Honourable Minister of Environment would usually sensitise the consultant who prepared the draft report that the review is not aimed to taunt or castigate his efforts. The aim is basically to arrive at the final EIA report which would be implemented for the collective interest and good of the country. The representatives from the FME also take record of the presentations.

During the review, experts present are called upon to make technical comments on the draft report. These comments are the bases upon which the presentation by the project proponent and the draft report are constructively critiqued and the observations are imported into the draft report as its improved version.

10) **Closed door meeting**: Excluding the presence and participation of the project proponent, this meeting is constituted by the Honourable Minister of Environment, experts and

representatives of the Federal Ministry of Environment who participated at the review of the draft report. At the meeting each participant independently grades the improved report in writing and submits or passes it on to the desk of the Honourable Minister or any of his representatives at the meeting. The grades could be A, B, C, D or E. Grade 'A' implies an excellent draft commendable for approval. Grade 'B' means the proponent and consultant are allowed a period of one month to do a little more on the report by incorporating cogent observations. Grade 'C' means the proponent and consultant are allowed a period of about 6 months to incorporate the observations with some clarifications. Grade 'D' means the proponent needs to mobilize the consultant to do another sampling in few areas to gather more data for analysis. Grade 'E' implies that the consultant has grossly performed below expectation and the process needs to start *de novo*.

The result or outcome of the grading of the draft report at the closed door meeting is submitted to the Honourable Minister of Minister of Environment, who would where it is an 'A' or 'B' grade give approval for the commencement of the project. However, where it is between a 'C' and 'E' grade, the Minister would disapprove the project commencement. Once an approval is given, the improved draft report becomes the final EIA report, and consequently the property of the Federal Ministry of Environment.[469]

11) **Compliance with Environment Management Plan (EMP)**: The project proponent must adopt measures to mitigate any incidents of pollution or degradation to the environment. Without this plan, an approval cannot be given, even though the draft report is excellent, ie an A grade.

After the approval, the Minister of Environment issues an EIA process completion certificate to the project proponent. The certificate contains the Environmental Impact

[469]The Federal Ministry of Environment Controller in Port Harcourt, UcheOgbonnayaOnu is hereby acknowledged for the insightful explanation of the practical process of how an environmental impact assessment report is approved.

Statement (EIS). This statement is the yardstick with which the compliance of the proponent with the EIA report would be based.

12) **Impact Mitigation Monitoring**: Where any non-compliance with Environmental Impact Statement is noticed on a monitoring visit to the project site, the proponent is warned. Where the non-compliance persists during a second inspection visit, the Federal Ministry of Environment notifies the National Environmental and Regulations Enforcement Agency to exercise its mandate to activate enforcement of compliance with the EIA report and EIS against such erring proponent.

3.4 **Environmental Monitoring and appropriate Agencies**:

As earlier stated, the Federal Ministry of Environment drives the process of the environmental impact assessment (EIA) and where the report is accepted, approval for the commencement of the project is issued by the Honourable Minister of Environment in form of an environmental impact statement (EIS) certificate. However, when it comes to implementation monitoring of an approved EIA, it is the government agencies established for that purpose that is charged with such duty. These include: NESREA, NOSDRA and Department of Petroleum Resources. At the State and Local Government Area levels, the implementation monitoring is done by some accredited private individuals and companies. It is opined that recruiting some private individuals to serve as whistleblowers of some on-going projects at rural areas or some secret locations in the urban areas could help in alerting appropriate authorities of any non-compliance with EIS process. Thus, once the whistleblowers notice an on-going project they would immediately alert the company contracted for monitoring implementation by the State Government.

Where it is discovered that the project proponent or company executing the project did not comply with the EIA processes, the project is immediately stalled. In most cases, the project site is sealed up. Once a project site is sealed up, it does not

resume until the executors comply with the EIA processes, else it becomes abandoned.[470]Undoubtedly, both NESREA and NOSDRA have made several regulations aimed at monitoring implementation of EIAs in Nigeria.

3.4.1 **Power to facilitate environmental assessment and make regulations**:[471]

By the provisions of the EIA Act, the power to facilitate environmental impacts assessment is conferred on the 'Agency', defined by the Act the Federal Environmental Protection Agency (FEPA), which was created by the FEPA Act. This implies that National Environmental Standards and Regulations Enforcement Agency (NESREA) is now the Agency empowered to facilitate environmental assessment. This is because the FEPA Act has been repealed by section 36 of the NESREA Act.[472] Accordingly, the Agency, NESREA has replaced the FEPA.[473] Similarly, every role that was played by the FEPA under the FEPA Act has been transferred to and can now be played by the NESREA under the NESREA Act.[474]

In practice however, the Federal Ministry of Environment (FME) appears to have retained the function of facilitating environmental impact assessments, leaving NESREA with only the role of enforcement of the EIA process contained in an Environmental Impact Statement (Certificate) issued to a project proponent by the FME. This means that whilst the Federal Ministry of Environment drives the process of EIA and until it issues certificate in form of an environmental impact statement; the NESREA cannot actively play any role in the process, except to enforce compliance with the EIS certificateissued to a project proponent. Thus, it is appropriate to amend meaning of the term, 'Agency' in the NESREA Act for the purpose of environmental impact assessment to include the

[470] NESREA Act, s.30(1)(g).
[471] EIA Act, s.58.
[472] NESREA Act, s.36 provides: 'The Federal Environmental protection Agency Act is repealed'.
[473] NESREA Act, s.37: In this Act- Agency means the National Environmental Standards and Regulations Enforcement Agency established under section 1 of this Act.
[474] See NESREA Act, s.35**,** which provides as follows: **'**Every other requirement, certificate, notice, direction, decision, authorization, consent, application, request, agreement or thing made, issued, given or done under any enactment repealed by this Act shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act'.

'Federal Ministry of Environment' and 'National Environmental Standards and Regulations Enforcement Agency'. Except this amendment is made to the NESREA Act, the repeal of the FEPA Act is in essence or substance a subterfuge.

3.5 **How the process of compliance monitoring is carried out**:

In ensuring compliance with the requirements of the law on environmental impact assessment, NESREA considers of paramount importance, the cooperation of the project proponent, the bank that sponsored the project, the accredited consultant and contractor involved in the project execution. Therefore, depending on the circumstance of each case, NESREA may proceed against any of these persons to get at the project proponent whose responsibility it is, to ensure compliance with the required EIA process. For instance, a visit to NESREA office in Port Harcourt, Nigeria confirms that many project proponents are usually in the habit of absconding from complying with the conditions for the project execution as contained in an EIS. To get at such proponent, NESREA would usually proceed against the contractor executing the project on site, seize its equipment or seal off the project site. Where the contractor had already concluded with the project execution and demobilized from site, NESREA may trace the bank that sponsored the project to get the details of both the project proponent and contractor. Where the bank refuses to release the details of the absconding project proponent (owner) and the contractor, NESREA will join the bank as accessory of the parties in violating the provisions of the EIA processes.

This process of monitoring compliance is also applicable to all projects, whether the proponent is corporate company, federal, state or local government agency or establishment. There is no law that government as proponent of project is excluded from the EIA process.[475] In *SERAPv FRN*,[476] the Plaintiff instituted the action in the ECOWAS

[475]EIA Act, s. 13.

[476]Unreported Judgment No: ECW/CCJ/JUD/18/12 delivered on 14/12/2012 by the Court of Justice of the Economic Community of West African States (ECOWAS), Holden at Ibadan, Nigeria, Hon. Justice BenfeitoMosso Ramos presided.

Court, against the President of the Federal Republic of Nigeria, and the Attorney General of the Federation as Defendants. Following series of oil prospecting and oil spills, which destroyed crops and damaged the quality and productivity of soil used for farming, and contaminated water used for fishing, drinking and other domestic and economic purposes, the Plaintiff alleged violation by the Defendants of the rights to health, adequate standard of living and rights to economic and social development of the people of Niger Delta and the failure of the Defendants to enforce laws and regulations to protect the environment and prevent pollution. The ECOWAS Court held that the Nigeria Government violated the provisions of Articles 18[477] and 24[478] of the African Charter on Human and Peoples Rights.[479] It is the responsibility of a licensee or proponent of a project to whom EIS certificate is issued to take steps to avoid any environmental damage or where damage is inevitable to ameliorate same and pay compensation to the affected persons.

Consequently, every person whose project requires the conduct of EIA must comply with the process. Even the government is not above the law with respect to the conduct of an EIA. This is because environmental issues transcend government and territories of States. Where the adverse effect from non-compliance with EIA process escalates, it would cost the government more money and resources to avert, ameliorate or check such effects. Even where it is not clear who the project proponent is, the contractor is usually proceeded against. It is from the contractor NESREA discovers the proponent – that is, whether it is government, public or private persons.

In practice, NESREA now goes after the contractor of projects whose proponent is the government. This is usually to avoid clash of interest between government establishments. Thus, NESREA would usually expect that the contractor should be well

[477]Article 18(1) provides thus: 'The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and morals.
[478]Article 24 of the Charter provides: 'All peoples shall have the right to a general satisfactory environment favourable to their development'.
[479] Cap A9, Laws of the Federation of Nigeria, 2004.

acquainted with the EIA process, by adding the cost of the conduct of EIA processes in his bidding for the contract. Where the cost of the EIA process was not part of the contract sum, NESREA expects the contractor to apply to its proponent to re-value or review the contract to include the cost for the EIA process. With this obligation placed on contractors, NESREA has recorded many successes in its compliance monitoring. This strategy of NESREA is analogous to a situation of getting at a master (government or any other project proponent) through its agent (the contractor executing the project). In this case, the exceptions to the law of agency relations may apply. For example, the law is that a principal would not be held liable where the agent acts outside the scope of his authority. As held by the Court of Appeal in *Asaka v Raminkura*,[480] an agent must act within the scope of his authority, to be able to commit his principal.

On the contrary, the unassailable position of the law is that a master is vicariously liable to the acts of its agent and not vice versa. It is therefore argued that NESREA has no justifiable basis to proceed against any other person who is not the proponent of the project. NESREA ought to discover the proponent of the project and proceed after such proponent – whether a private or public person, an individual or government. However, as a result of avoiding confrontation with government as proponent NESREA appears to prefer exacting its might against an otherwise helpless or innocent contractor.[481] For example, *FRN v O. K. Isokariari& Sons (Nig.) Ltd*[482] is a live issue where Rivers State Government, the proponent of the re-construction of a public market awarded the contract of modifying the market facilities to the accused company. Rather than sue the state government for alleged non-compliance with the EIA process in respect of the re-

[480][2015] All FWLR (Pt. 787) 774, at 795, A, per Mbaba JCA. See also the Supreme Court decisions in *Okwejiminor v Gbakeji*[2008] All FWLR (Pt. 409) 405, at 448, A – C, per Mohammad JSC; *UniversalVulcanizing (Nig) Ltd v IUTTC* [1992] 9 NWLR (Pt. 266) 388, at 403, D and H, Omo, JSC.

[481] This is particularly so, as it is expected that the EIA of a project must have been carried out before the award of the contract for its execution.

[482] On-going suit at the Federal High Court Port Harcourt Judicial Division in CHARGE NO: PHC/PH/11C/2016.

construction, NESREA proceeded against the company after it had executed the contract and demobilized from the construction site.

Conversely, it would appear that NESREA's view is that a contractor who knows his job should be conversant with the requirements of the project, which he should always find out from the proponent/sponsor of the contract before mobilizing to site. Where such contractor fails in his obligation of ensuring compliance with requisite environmental laws and EIA, he is held liable jointly with the proponent.

It is submitted however that unlike a contractor on site, where a contractor had already executed the project and demobilized from the site, NESREA does not reserve the right to seal off the private premises of that contractor in the name of compliance monitoring. All that the NESREA should do in such case is to discover from the contractor the project proponent and to proceed after such proponent. This is particularly so as the contractor is deemed the agent of the proponent principal. As held in *Essang v Aureol Plastics Ltd*,[483] the trite position of the law is that an agent of a disclosed principal incurs no liability; as the act of the agent is deemed that of the principal. Thus, NESREA must necessary proceed after the actual proponent once it is disclosed; and not the agent or contractor.

Accordingly, until the EIA Act is amended to accord NESREA the power of going after contractors and subcontractors in breach of EIA, it is questionable for the Agency to continue violating the rights of contractors in this regard. It is further submitted that the action of NESREA officials is contrary to the position of the law on criminal liability. Holding a person liable for the offence of another is unacceptable in law. This also accords with the axiom that whatever a man sows, he shall reap.[484] The

[483][2002] FWLR (Pt.129) 1471 at 1488 paragraph G – H.
[484] Galatians chapter 6 verse 7, Holy Bible, King James Version.

law is trite that criminal liability is personal and there can be no agency relationship in criminal conduct.[485]

Furthermore, it is of public knowledge that State governments in most cases interfere with the role of NESREA at ensuring compliance with environmental audit report (EAR).[486] This interference by state governments is usually revenue-driven. As such, they usurp the role of NESREA to levy fines on companies/contractors which do not submit its EAR to its State Ministry of Environment on 3 yearly-bases. In some cases too, the local governments asks for project EAR in order to generate their own revenue. This state of affairs has the adverse cost effect of jeopardizing the economic interest of project proponents in upgrading or updating their EAR. This is because both the NESREA and State government would usually insist that the company/establishment doing the EAR should do so through its separate consultants.

Consequently, and in most cases, the company doing the EAR is made to spend double the cost of the EAR. On the failure of the company to comply with NESREA, is would be proceeded against by the agency and invariably the Federal government. Similarly, where the company fails to cooperate with State Government, the Governor through the State's Ministry of Environment and Urban Development may seal off the company's premises in the name of public purpose in exercise of his powers under the Land Use Act.[487] It is also part of the constitutional obligations of a State to regulate and monitor strict compliance with environmental laws in the collective interest of that State.[488]

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[485]*Dina v Daniel* [2009] All FWLR (Pt. 480) 632 at 652 paragraphs G – H; *Oyegun vIgbinedion* [1992] 2 NWLR (Pt. 226) 747 at 761, F – G.

[486] However, it would appear that the Unreported Appeal No: CA/K/123/2010,*Helios Towers v NESREA* is yet the current position of the law to the effect that NESREA isthe body vested with powers to issue environmental impact assessment certificate'.

[487] Cap. L5, Laws of the Federation of Nigeria (LFN), 2004, s. 29, and the African Charter for Human and Peoples Rights, Cap A9 LFN, 2004, s.14. Although under the Land Use Act, compulsory acquisition of land for public interest or purpose requires the payment of adequate compensation; it may be under–valued, resulting to loss of business for the company or entity whose land the State Government has so acquired.

[488] This is because in the Constitution, environment issues are listed under the concurrent legislative list; implying that the Federal, States and Local Governments can legislate on environmental issues.

It is submitted that since the law frowns at double compensation[489] it also abhors double taxation.[490] Thus, the synergy of the Federal, State and Local governments is advocated in order to harmonise the process of compliance monitoring with respect to the requirement of EAR of projects. It is opined that in compliance monitoring the State government should be the major stakeholder. The State government should drive the process of EAR but in consultation with NESREA and the use of NESREA accredited consultants. Where any penalty is recovered by the State government, it should be made to remit certain percentage of the penalty at source to NESREA in favour of the Federal government or Federal Ministry of Environment.

Put differently, the fine collected from a defaulting company is automatically shared in agreed percentage between the State and Federal governments. For instance, where the penalty is accessed at Fifty Thousand Naira (₦50,000.oo), the defaulter should pay Twenty Thousand Naira (₦20,000.oo) to the Federal government and Thirty Thousand Naira (₦30,000.oo) to the State government. The fee payable as penalty by a defaulter must be ascertainable and not arbitrarily fixed or charged by both the Federal and State governments. Furthermore, it is viewed that the state government should get more of the fee because its citizens are directly or mostly affected by the environmental consequences of non-compliance with EIA, EAR and related impacts. Undoubtedly, this would check the incidence of double taxation and also make project proponent compliance-oriented; as it is usually the case that a state government knows its territory

[489] *SPDC (Nig) Ltd v Tiebo VII* [1996] 4 NWLR (Pt. 445) 657, at 689, paragraphs G – H.

[490] In *Halliburton West Africa Ltd v FBIR* (2006) 7 CLRN 138, it was held that though the object of a taxing statute is to raise revenue for the government, it is however not the intention of the law makers that a person should be taxed for the same money that it paid to its Nigerian affiliate. Similarly, the Supreme Court has held that no State has power to make any law or regulation which will impose any discriminating burden or tax upon its citizens. *A.G. Ogun State v* Aberuagba[1985] 1 NWLR (Pt. 3) 395, at 416 417, H, and C – E. It has been argued that one of the ways of avoiding double taxation and its undesirable effects is for the governments concerned to enter into tax treaties to ameliorate the effect of double taxation and where possible eliminate it. FE Nlerum,Reflections on the Attitude of the Courts to Tax Incentive Mechanism in Nigeria in *NIALS Journal of Business Law, p.125.* <http://www.nials-nigeria.orgjournalsDr.Francisca%20E.%20Nlerumbus> accessed 27 June, 2016.

more and is able to discover more defaulters with the help of its whistleblowers engaged from the grassroots and location of projects.

3.6 **Project Commissioning and Audit**:

In facilitatingmanagement control of environmental practices and assessing compliance with anoperation or activity's environmental policies, including meeting regulatory requirements, a completed project which has been commissioned is subject to audit.

3.6.1 **Classification or Types of Environmental Audit**:

Environmental audit may be classified based on 'how or by what way' it is carried out, namely: self-audit; internal audit and external audit of exponent's staff. Environmental audit can also be classified based on 'what or the purpose' it is to be audited, including: regulatory compliance audit – in relation to EIA Act and other environmental legislations and requirements; process safety audit – in relation to best safety practices respecting hazards and emergencies; occupational health audit – in relation to use of safety equipment for protection against noise and air pollution; liability audit – in relation to performance capacity of facility/machinery and remediation processes, and management audit – in relation to documentation of exponent's environmental performance measured against required standards.

3.6.2 **Environmental Audit Stages/Processes**:

There are basically three major stages involved in environmental audit exercise.

a) Pre-audit preparation stage: this involves the processes of: audit team selection; audit area selection; and pre-audit information on the site activities. The audit team must be selected to involve a certified environmental regulator or accredited consultant of environmental Agencies, the exponent/company's consultants and internal observers.

b) Conducting the actual environmental audit: This involves the preliminary meeting of the audit team, where the documents or information that will guide the audit,

such asquestionnaires and company's policy statements are considered and reviewed.Following is the stage of inspection of project site in order to interview relevant members of staff regarding current practices of the exponent's company; assessment of compliance with statutory requirements, taking of pictures, diagrams, maps etc. that would be useful to support findings. The next stage is the review of the site audit inspection and data collection, which data should be verified and evaluated against the main objectives for the audit. After verification and evaluation, a closing meeting is held where the audit team finalizes their resolutions on the audit exercise.

c) Post Audit Activities: These involve the out-of-site preparation of a draft audit report which contains the findings and recommendations which provides an action plan for the implementation or improvement of default areas. This draft which should normally be ready at least a week after the audit has been carried out is issued to the company thereby providing an important opportunity for the management of the unit being audited to see and comment upon on it. The draft of the audit report is thereafter revised with the necessary clarifications and corrections of inaccuracies before it becomes a final[491] audit report. Ideally, an audit report should not be lengthy, but should be about 25 to 30 pages depending on the number of areas audited, and should contain the information as follows:

   i. Contents list
   ii. Executive summary
   iii. Introduction
   iv. Purpose and Scope of the audit
   v. Methodology
   vi. Discussion and analysis of the findings

[491] This final report should normally be ready within 4 – 5 weeks after the closing meeting of the audit team.

vii. Reference to items for corrective action

viii. Actions and recommendations

ix. Conclusion

x. Distribution list

xi. Records of the audit programme

xii. List of participants.[492]

3.7 **Requirement of an Environmental Audit Report (EAR)**:

In environmental audit, consideration is had to air, water, and land. The existence and operation of the project are tested with respect to air, water and soil quality and possible effect on health, safety and the environment (HSE).

With respect to air, an accredited consultant tests for its quality around the project or some relative distance from the project operations area. The air quality is ascertained from the nature of gas around the project area. Where the gas is for instance contaminated or poisonous, the air quality test fails. Conversely, the air quality test passes if the nature of gas around the area is not contaminated or harmful to the environment or any of its components. For water quality, it is tested for its conductivity, turbidity and PH[493] contents. This quality test is carried out for both surface and underground water samples collected from adjoining water bodies within and around the project area. For land, the test for its quality is ascertained from soil sample analysis.

On the requirement of health, safety and environment (HSE), audit is carried out on the effect or impact of the project type on the health and security of the environment as a whole. The HSE audit varies with the type or nature of project. For example the test or audit for health in a food or beverage company (that is, bakery or restaurant) would be different from that of a paint factory, or an abattoir. For an abattoir, the audit would involve the dress code of the butchers – that is, whether the operators are well kitted and

[492] National Open University Course Guide on Environmental Impact Assessment and Auditing, ESM 342 accessed from www.nou.edu.ng on January 20, 2016.
[493] Phosphorus and hydrogen

protected; the health condition of the animal slaughtered and the disposal of wastes generated from the abattoir – that is, whether they are disposed as general wastes or recycled to be used for another economic purpose.

Similarly, for a food and beverage company, the audit would consider the type and freshness of the food, the cleanliness or sanitation of the environment, including kitchen, preparation process of the food, kitting of the cooks and handling of the food at sales or eating points of the eatery or bakery. For a paint industry, audit is carried out with respect to the effect of chemicals used on the air, soil and water bodies around the area. Importantly, the health condition of the workers in a project is also of paramount importance and influences the totality or outcome of an audit report.

Summary of Environmental Impact Assessment Framework in Nigeria

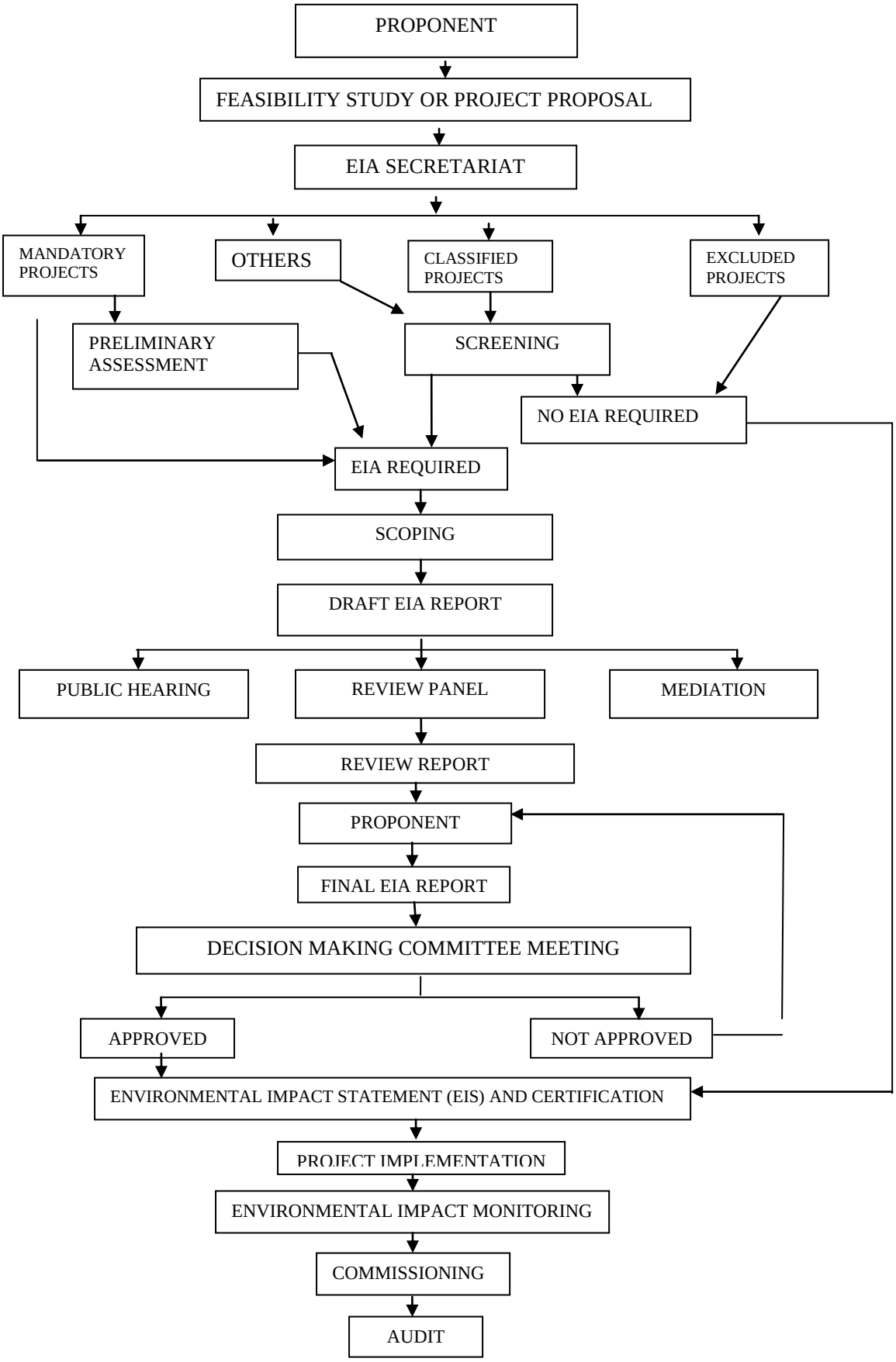

Figure 2: Environmental Impact Procedure in Nigeria. Source: FEPA (1994)

3.8 **SomeChallenges of Environmental Impact Assessment/Audit in Nigeria**:

1) **Compliance issues**: The basic problem in Nigeria with respect to environmental impact assessment and standards is that of compliance. It is not the absence of laws to regulate environmental protection, but that of non-compliance. This is a major set-back against regulations of activities aimed at protecting the Nigerian environment.

2) **Weak institutions**: The regulatory agencies appear to be weak with respect to enforcing the provisions of the laws against non-compliance. In most cases, it is the enabling law that has even handicapped or weakened the agency from enforcing compliance creditably. The exhibited weakness of environmental agencies in having to wait for every relevant ministry before taking steps to respond to an emergency like oil spillage is defeatist to the purpose of the agencies.[494] For example, section 19(3) of the NOSDRA Act is seemingly a subjugation of the Agency to an oil spiller in the event of any spill occurrence.

The provision of the subsection to the effect that the Agency shall ***assist*** in the assessment of damage caused by an oil spillage is ridiculous and demeaning to what the Agency's authority should be, when duty calls.[495] There is need to expunge this paragraph in order to exclusively reinstate the authority of the Agency in assessing the damage caused by oil spillage.

3) **Official corruption**: Owing to the problem of what seems like institutionalised corruption and moral decadence in the country, it appears most of the violators of the law on environmental protection go scot free once they pay a little bribe to some corrupt officials of the regulatory agency. Consequently, notwithstanding the introduction of the Treasury Single Account by the present administration the trend of devising channels and

[494]NOSDRA Act, s. 19.

[495] S. 19 (3) (d) NOSDRA Act, 2006. Note that by S.19 (2) the Agency shall act as the lead Agency for all matters relating to oil spill response management...for the implementation of the Plan... enacting further that the Agency 'shall assist' waters down the Agency's lead role over spill matters.

avenues of pecuniary benefits will perhaps still pose major threats to the fight against official corruption.

4) **Low environmental awarenessor inadequate publicity of EIA Act, among others**:The fact of apparently very low or complete lack of awareness about the existence of the EIA and other environmental laws by many people involved in business undertakings that require environmental impact assessment is a major setback. NESREA admits the lack of baseline information and data; inadequate public awareness and education on environmental standards and regulations; and poor information exchange and feedback mechanisms between the Regulatory Agency and the Regulated Communities.[496] Similarly, NOSDRA's Director- General also admitted this point when he said 'the Agency intends to increasingly do more of public awareness and education, so that people can also appreciate that in the long term it is better not to pollute the environment because it will affect our economic activities in terms of farming or in terms of fishing etc. So we intend to do a lot more of public awareness'.[497] This lack of awareness is made worse with the difficulty of accessing the regulations which we opine should be made available to Nigerians free of charge or at least accessible on-line.

5) **Illiteracy in the populace:** One of the remote causes of environmental degradation activities today is that many people are unaware of the adverse consequences of many undertakings that require environmental impact assessment. It is in the habit of some village area boys to vandalise or burst oil pipes, in order to cause spills; with the hope of receiving compensation for damage caused.[498] Unknown to these boys, any person suffering damage on account of his own default or on account of the malicious act of a third person as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, shall not be compensated. This amounts to sabotage; for which

[496]Culled from www.nesrea.org.
[497]<http://thenationonlineng.net/%23/web2/articles/4736/1/We-keep-oil-companies-on-their-toes/Page1.html> accessed on 28 February, 2016.
[498] S. 11(5) (c), Oil Pipelines Act.

people need reorientation to the effect that damage caused to their living environment is grievously more adverse compared to any amount of compensation anticipated.

6) **Multiple environmental regulators at the Federal, State and Local Government levels and duplicity of functions:** The existence of various agencies whose functions relate or overlap in some respects creates some friction with regards to exclusive responsibilities. This duplicity of objectives and functions weakens the performance of the agencies. Consequently, the functions of the Federal Ministry of Environment and NESREA need to be stream-lined. This is because many of the statutory functions of NESREA are still part of functions of the Federal Ministry of Environment. Similarly, the existence of Department of Petroleum Resources (DPR) appears to weaken the potency of NOSDRA as the lead Agency responsible for tackling oil spill matters. This problem of duplication and overlap of functions in existing environmental legislation tends to promote several escape and excusable routes for oil companies, which may falsely claim to have obtained NODRA approvals from DPR and vice versa. It is decrying that the DPR severally infringes the functions of the NODSDRA. For example, among other things, the Guidelines for the Operation and Maintenance of Oil Pipelines require an oil pipeline licensee to regularly patrol the right of way for prompt detection of any line-break, encroachment or any other situation that may endanger the safety of the pipeline; and report same to the DPR.[499] Similarly, by the Petroleum Act 'Description of Pipelines', number 4, 'All pipelines shall be patrolled and inspected once in every 24 hours or at such longer intervals as the Director of Petroleum Resources may approve' and in addition at all times when pumping operations are taking place, by competent

[499] See regulation 9(h) (i) of the Oil and Gas Pipelines Regulations, under the Oil Pipelines Act. See further CU Mmuozoba, Oil economy, corporate social responsibility and the politics of oil pipeline explosions: Are there socio-legal paradigms for pipeline integrity in Nigeria?, in Nigerian Journal of Petroleum, Natural Resources and Environmental Law, vol. 1, No. 1, 58.

persons appointed by the licensee of the pipeline and details of the inspection shall be recorded in a log book provided for that purpose.[500]

Thus, it is urgent to redefine or streamline the roles of DPR in the Nigeria's oil and gas sector. Even the prospective Petroleum Industry Act (PIB)[501] conceived as an omnibus bill that will repeal the Petroleum Act, 1969[502] as well as consolidate about 16 other petroleum industry laws into one single, transparent and coherent document appears to only streamline the functions of the petroleum industry's regulatory agencies being performed by the DPR; the Nigerian National Petroleum Corporation (NNPC) and the Petroleum Products Pricing Regulatory Agency, (PPPRA), with a view to eliminating overlaps for effective operations monitoring. It is viewed that this approach may further generate more areas of conflicts between NOSDRA and DPR, as nothing is mentioned about the roles of NOSDRA in the PIB.[503] By regulation 9 (h)(i) of the Oil and Gas Pipelines Regulations under the Oil Pipelines Act the DPR is to be promptly notified of any line-break, encroachment or dangerous situation detected on any oil pipelines.[504] This role of the DPR has most of the times placed it to assume authority over spill issues which NOSDRA should have handled. For this functional overlap, many spillers could escape liabilities because of not knowing the Agency to deal with. That a Defendant does not know which Agency to transact with may well be a valid defence in court.

7) **Insufficient staffing:** Lack of manpower and poor technical competence within environmental regulatory bodies and corporate organisation is attributable to insufficient staffing; which is perhaps contributory to the enormous challenges facing them. For

[500] (Emphasis supplied).
[501] A Bill for an Act to Provide for the Establishment of the Legal and Regulatory Framework, Institutions and Regulatory Authorities for the Nigerian Petroleum Industry; Establish Guidelines for the Operation of the Upstream and Downstream Sectors; which is awaiting being passed into Law.
[502] Cap. P10, LFN, 2004.
[503]PIB, ss. 31, 34, 46, 451, 452, 454, and 458; Nwachukwu, C. 2011.Redefining DPR's role in Nigeria's oil, gas sector.<http://www.vanguardngr.com/2011/04/redefining-dprs-role-in-nigerias-oil-gas-sector/> accessed on 24 March, 2016.
[504] See further CU Mmuozoba, 'Oil economy, corporate social responsibility and the politics of oil pipeline explosions: Are there socio-legal paradigms for pipeline integrity in Nigeria?, in *Nigerian Journal of Petroleum, Natural Resources and Environmental Law*, vol. 1, No. 1, 58.

example, unavailability of field officers of the agencies at various locations makes it difficult to simultaneously monitor on-going projects, oil spills proactively and timeously. Besides, since incidents like oil spills usually occur unexpectedly, when neither NOSDRA nor the oil company spiller is prepared to tackle it, the result is damaging. For this inadequacy, most oil spills, despite the painful consequences, remain unreported till date.

8) **Corporate flippancy**: Many environmental issues are still not given the adequate attention they require by many corporate organisations whose activities disturb the ecosystem. This is more worrisome when the top management cadre of a company is unconcerned about the resultant effect of the activities of their company on the environment. Consequently, environmental concerns are usually given a fire brigade approach, without any commitment of adequate resources to cushion the effect of any inevitable adverse impacts.

9) **Revenue generation drive of Federal and State Environmental Protection Agencies**: The ubiquity of many adversely impactful projects that go on without due observance of their impact assessment gives credence to the view that the agency appears to be more revenue-driven, rather than the protection of the environment. This is particularly so, as the agency allows violators to continue with their activities once the required penalty is paid. In the same vein, the common trend of tussles between the Federal and State governments on who issues valid permit for environmental impact assessment is indicative of the battle for the collection of the requisite fees payable for the permits. Although the Court of Appeal has declared that the federal government agency (that, is NESREA) is the authority empowered by law to issue such permit, it is difficult to completely extricate the State government from the scheme of things as it is the people and residents of that State who are usually more affected than the somewhat remote

federal authorities as a result of the adverse impactful activities for which NESREA issues the permits.

10) **Shallow assessment reports by consultants**: The quest for quick money and the prevailing situation of geometric unemployment in the country have given rise to the hijacking of the conduct of EIA process by inexperienced environmental analysts, some of who are quacks. Consequently, this has given rise to production of low quality or shallow assessment reports, adherence to which may cause more problems and expose the environmental to more hazards. It is important to underscore the point that the trend of infiltration of quacks is not prevalent only in the environmental industry. There abound several quacks, who continue to utilise the various professional areas of the Nigerian economy in their bid for survival, not minding the consequences.

11) **Ethical issues**: These relate to traditional, cultural or mundane attitudes most of which form the bedrock of how the environment is considered and cared for by its various inhabitants and users. The cultural practice of bush burning by peasant farmers, nonchalant attitudes ofcommercial vehicle drivers with smoking cabs and buses,[505] multinational oil gas flarers, as well as timber dealers, who fell forest trees without realising the need to replant them are all ethical issues which influence acceptable environmental standards.

[505] Sometimes, it is a wonder why we have the Federal Road Safety Corps, since they scarcely enforce the law for the inspection of the road-worthiness of vehicles on the roads. Ss. 5(h) of the Federal Road Safety Commission Act, 2007.

CHAPTER FOUR:

ANALYSIS OF SOME REGULATIONS ON ENVIRONMENTAL IMPACTS ASSESSMENT

4.1 Appraisal of NESREA's Regulations made pursuant to Environmental Impact Assessment:

The geometric increase in population, as well as activities of industrialization has contributed to great environmental degradation to the ecosystem. For example, most industries discharge untreated effluents into the environment. These activities have negatively affected human health. Consequently, as part of its commitment to give effect to the EIA and in order to address the consequences of these activities, the Federal Government of Nigeria has made several regulations to protect the environment and human health. These Regulations now serve as tools for compliance monitoring and enforcement of environmental laws, guidelines, policies and standards. The main thrust of these regulations therefore, is to prevent and minimize the impacts of pollution from all operations and ancillary activities on the environment. All the Regulations can be procured at approved official prices from any NESREA office nationwide.

The National Environmental Standards and Regulations Enforcement Agency (NESREA) alone, has so far made a total of 28 Regulations, pursuant to the EIA and NESREA Acts. In 2009, NESREA made a total of 11 Regulations (each of which costs ₦500.oo) with respect to the following:

1) Access to Genetic Resources and Benefit Sharing;[506]
2) Chemical, Pharmaceutical, Soap and Detergent Manufacturing Industries;[507]
3) Food, Beverages and Tobacco Sector;[508]
4) Mining and Processing of Coal, Ores and Industrial Minerals;[509]

[506] Federal Republic of Nigeria Official Gazette, No. 62.
[507] Official Gazette , No.68, Vol. 96, S.I. No.36, Govt. Notice No. 289, pages B1319 – 1363 (₦500.oo).
[508] Official Gazette, No. 65, Vol. 96, S.I. No.33, Govt. Notice No. 286, pages B 1211 – 1248 (₦500.oo).
[509] Official Gazette, No. 63, Vol. 96, S.I. No. 31, Govt. Notice No. 284, pages B1147 – 1185.

5) Noise Standard and Control;[510]

6) Ozone Layer Protection;[511]

7) Permitting and Licensing System;[512]

8) Sanitation and Waste Control;[513]

9) Textile, Wearing Apparel, Leather and Footwear Industry;[514]

10) Water Shed, Mountainous, Hilly and Catchment Areas;[515]

11) Wetland, River Banks and Lake Shores;[516]

In 2011, a total of 13 Regulations were made with respect to the following:

1) Base Metals, Iron and Steel Manufacturing/Recycling Industries Sector;[517]

2) Coastal and Marine Area Protection;[518]

3) Construction Sector;[519]

4) Control of Bush, Forest Fire and Open Burning;[520]

5) Control of Vehicular Emissions from Petrol and Diesel Engines;[521]

6) Desertification Control and Drought Mitigation;[522]

7) Domestic and Industrial Plastic, Rubber and Foam Sector;[523]

8) Electrical/Electronic Sector;[524]

9) Non-Metallic Minerals Manufacturing and Industries Sector;[525]

10) Protection of Endangered Species in International Trade;[526]

11) Soil Erosion and Flood Control;[527]

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[510] Official Gazette, No. 67, Vol. 96, S.I. No. 35, Govt. Notice No. 288, B1299 – 1318.
[511] Official Gazette, No. 64, Vol. 96, S.I. No. 32, Govt. Notice No. 285, pages B 1187 – 1209 (₦500.oo).
[512] Official Gazette, No. 61, Vol. 96, S.I. No. 29, Govt. Notice No. 282, pages B1105-1119.
[513] Federal Republic of Nigeria Official Gazette, No. 60.
[514] Official Gazette, No. 66, Vol. 96, S.I. No. 34, Govt. Notice No. 287, pages B1251 – 1296 (₦350.oo).
[515] Federal Republic of Nigeria Official Gazette, No. 59.
[516] Federal Republic of Nigeria Official Gazette, No. 58.
[517] Official Gazette No. 41, Vol. 98, S.I. No. 14, Govt. Notice No. 127, pages B 419 – 479 (₦2,500).
[518] Official Gazette No. 45, Vol. 98, S.I. No. 18, Govt. Notice No. 132, pages B 561 – 590, (₦2,500).
[519] Official Gazette No. 46, Vol. 98, S.I. No. 19, Govt. Notice No. 133, pages B591 – 614, (₦1,500).
[520] Official Gazette No.42, Vol. 98, S.I. No. 15, Govt. Notice No. 129, pages B481 – 500 (₦1,500).
[521] No .47, S.I. No. 20 (₦1,500).
[522] Official Gazette, No. 40, Vol. 98, S.I. No. 13, Govt. Notice No. 126, pages B399 – 417 (₦1,500).
[523] No. 44 (₦2,500).
[524] Official Gazette No. 50, Vol. 98, S.I. No. 23, Govt. Notice No. 137, pages B729 – 797, (₦3,500)
[525] No. 48 (₦3,000).
[526] No. 43 (₦350).

12) Standards for Telecommunications and Broadcast Facilities;[528] and

13) Surface and Groundwater Quality Control.[529]

In 2013, a total of 4 Regulations were made with respect to the following:

1) Control of Alien and Invasive Species.[530]

2) Motor Vehicle and Miscellaneous Assembly Sector;[531]

3) Pulp and Paper, Wood and Wood Products Sector;[532]

4) Quarrying and Blasting Operations;[533]

We have analysed some of the above listed regulations hereunder.

4.2.1 **Permitting and Licensing System Regulations, 2009**[534]

The Permitting and Licensing System Regulations have a purpose which is among others to enable consistent application of environmental laws, regulations and standards in all sectors of the economy and geographical regions.[535]It is arranged into 4 parts,[536]and prescribes the procedures, forms and formats for application, approval and issuance of permits for any activities regulated by the NESREA.[537]

Permit Application Procedure: The procedures for applying for a licence or permit are the necessary steps taken in phases or stages before the Agency approves and issues a licence or permit to an operator or facility; which could be industry, factory or any physical set up or equipment for manufacturing, production and processing including treatment of plants. Usually two copies of signed and dated application for permit are submitted both in hard and soft (electronic) copies to NESREA either by hand or

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[527] Official Gazette No. 39, Vol. 98, S.I. No. 12, Govt. Notice No. 125, pages B371 – 398 (₦1,500).
[528]No. 38, S.I. No. 11 (₦1,500).
[529] Official Gazette No. 49, Vol. 98, S.I. No. 22, Govt. Notice No. 136, pages B693 – 727 (₦2000).
[530] Official Gazette No.96, Vol. 100, S.I. No.32, Govt. Notice No. 212, pages B525 – 546.
[531] Official Gazette No. 99, Vol.100, S.I. No. 35, Govt. Notice No. 215, pages B625 – B682.
[532] Official Gazette No.98, Vol. 100, S.I. No. 34, Govt. Notice No. 214, pages B573 – B623.
[533] Official Gazette No. 97, Vol. 100, S.I. No. 33, Govt. Notice No. 213, pages B 547 – 571.
[534] Official Gazette, No. 61, Vol. 96, S.I. No. 29, Govt. Notice No. 282, pages B1105 – 1119.
[535]Reg. 1.
[536] Part I- Application Procedure, regulations 2 – 12; Part II – Amendment and Renewal of permit, Regulations 13-18; Part III – Suspension and Cancellation of Permit – Regulations 19-32 and Part IV – Rehearing and Appeals, Regulations 33 – 40.
[537] See the Schedule to the Regulations.

registered mail or courier.[538] Upon payment of approved fees[539] and acknowledgement of the application by the Agency, it is expected to consider and give or withhold approval for the permit within 30 days of its submission.[540]

Where the Agency refuses to approve the permit, it is expected to give notice of the refusal to the applicant, stating the reasons, following which the applicant may appeal to the Agency within 21 days from date of notification of refusal.[541]The decision of the Agency on an appeal shall be communicated to an applicant within 14 working days.[542]

Importantly, amendment and renewal of a permit may be granted by the Agency on the application of an operator and upon fulfillment of certain terms and conditions, including payment of processing and amendment fees. The renewal is usually done at least 90 days before the expiration of a subsisting permit.[543] On the other hand, a permit may be suspended by the Agency via notification to the permit holder where in the opinion of the Agency the permit holder violates of any of the extant laws, regulations and policy directives upon which the permit is based.[544]

A permit holder whose permit has been suspended may make representations or to the Agency within 21 working days of receipt of the suspension notice, following which the Agency may review its suspension order or cancel the permit forthwith.[545]

It is commendable that by regulations 28-32, the Agency affords a permit holder the opportunity of fair hearing after receiving notice for cancellation of his permit. Thus, a permit holder may within 21 working days demonstrate to the Agency that the circumstances warranting the cancellation have changed, following which the Agency may instead of cancelling the permit make order imposing further terms and conditions

[538]Reg.2.
[539]By Regulation 4, approved fees include: application fee, processing fee, permit fee, amendment fee, renewal fee, re-hearing fee, and appeal fee.
[540]Regulations 5 – 8.
[541]Regulations 9 – 11.
[542]Reg. 12.
[543]Regs. 13 – 16.
[544]Regs. 19 – 21.
[545]Regs. 20 – 25.

before the permit would be allowed to operate.[546] In other words, if the permit holder changes for good, the Agency forgives him and instead of cancelling the permit makes order permitting him to operate, albeit based on further terms and conditions. In the same vein, where a permit holder is not satisfied with the decision of the Agency, he may further appeal to the Director-General for rehearing or review of such decision.[547] The review or reconsideration of decision is done by the Agency within 30 working days, following which it issues a final order.[548] The review is possible only where an applicant has not withdrawn his appeal as he is entitled.[549] This is because once an appeal for review is withdrawn, it cannot be reactivated. The implication is that all the fees paid for that purpose expire. Consequently, a fresh appeal for review or rehearing would require fresh payment of prescribed fees including application fee, processing fee, rehearing fee, and appeal fee.[550]

It is however viewed that the grounds for suspension of a permit based principally on the opinion of the Agency "that enough grounds exist which may warrant the suspension of a permit" is ambiguous. This is particularly so because the Regulations although providing for what constitutes grounds for suspension, did not anywhere provide what constitutes 'enough ground'. Furthermore, basing suspension on 'opinion' of the Agency is nebulous or vague. The opinion of the Agency may be formed based on prejudice against a permit holder especially in an era where many political appointee officers and staff of an Agency carry out the biddings of their appointers against perceived political opponents. For example, various infrastructural projects have been abandoned because a succeeding government did not want to continue with the contractors executing the projects, to whom the government is indebted in milestones,financially; perhaps because the project was initiated by the past

[546]Regs. 28 – 32.
[547]Reg. 33.
[548]Regs. 34 – 35.
[549]Reg. 36.
[550]Regs. 37 – 38.

administration and also being handled by perceived opponents who fraternized with the past administration. This trend also affects many government agencies.The reason behind this attitude is usually to starve the perceived opponent of funds in order to cripple any form of opposition against the incumbent government.

In the same vein, the provision for a further appeal for review to the Director-General may be a mere formality. This is because the prior decision appealed against could not have been taken without the input and authorization of the Director-General. So any further appeal to the Director-General is akin to filing an appeal to a judge who had initially sat over and decided the case. Strictly, this offends the principle of natural justice.[551] By implication the Director-General would be re-hearing a case over which he had already taken steps or made a decision.

Clearly, from the provisions of regulation 33, any person dissatisfied with a decision of the Agency may appeal to the Director-General for a rehearing, or review of such decision. Thereafter, Regulation 34 without mentioning the Director-General provides that the Agency shall in accordance with its Rules and Proceedings re-consider, re-affirm, vary or rescind its decision before issuing a final order. In other words, while the appeal for review is made to the Director-General, it is the Agency that hears and reviews the appeal. This means that the Agency which issued the initial suspension notice; the Director-General to whom an appeal is made to review the suspension notice or the Agency which hears the appeal is one and the same authority. We submit that it would be more appropriate if a higher authority to the Agency and its Director-General was made the appellate authority for the purpose of hearing and reviewing the Agency's decision. In the circumstance a court of law or special tribunal would better serve that purpose.

[551] The cardinal principle is *nemojudex in causasua*, meaning no man should be a judge in his own case or cause.

Arguably, the reason for this chain of appeal is predicated on fund drives of the Agency. This is clear from the various fees chargeable by the Agency, namely: application fee, processing fee, permit fee, amendment fee, renewal fee, re-hearing fee, review fee, appeal fee. Each of these fees would be repeatedly paid whenever the application for permit, review, or appeal against suspension or cancellation decision is withdrawn by the applicant. This drive for fund is capable of discouraging prospective applicants from embracing the process. Consequently, it would defeat the basic purpose or aim of the Regulations, NESREA and the EIA Laws at large which is, to protect and safeguard the environment for public good, interest, safety and health. We therefore opine that in order to encourage compliance, there is the need to expunge or re-consider some of the fees chargeable by the agency under its Permits and Licensing System. Alternatively, the government may bear some of the costs in order to cushion the effect of huge costs on a project proponent or applicant.

4.2.2 **Chemical, Pharmaceutical, Soap and Detergent Manufacturing Industries Regulations, 2009**[552]

Organised into 9 parts, the Regulation has a total of 55 provisions.[553] The purpose of the Regulations is principally to prevent or minimize pollution from all operations and ancillary activities of the industries that manufacture chemicals, soap, detergent and pharmaceutical products.[554] Among others, every facility shall before commencement of operation submit to the Agency the environmental impact statement; environmental audit report and environmental management plan for the industry.[555]

[552] Official Gazette , No.68, Vol. 96, S.I. No.36, Govt. Notice No. 289, pages B1319 – 1363 (₦500.oo).
[553] Part I – Regulations; Part II – Sampling procedures; Part III – Permits; Part IV – Industrial effluent or air emission monitoring and reporting; Part V – Enforcement; Part VI – Offences; Part VII- Penalty; Part VIII – Incentives; and Part IX – Interpretations.
[554] Reg. 1.
[555] Regs.2 and 3.

The activities of the industry are also regulated by the polluter pays principle.[556] Thus, the industries are expected to adopt best practices[557] by installing anti-pollution equipment.[558] Manufacturers and importers shall also establish a buyback programme for packaging of products.[559] The list or record of chemicals usage which must be submitted to the Agency is necessary to regulate banned or restricted chemicals.[560] Therefore, no facility shall discharge any effluent, or oil in any form into any water system, public drains, or underground injection and land without the necessary permit from the Agency.[561]

With respect to emission standards, facilities which discharge gaseous emission shall ensure its treatment to the permissible level.[562] Similarly, every facility in the sector shall ensure controls to prevent risk of noise pollution. Accordingly, noise abatement and hearing conservation measures shall be in place to achieve the permissible noise levels.[563] For all these, sample collection and analysis shall be carried out on chemicals, microbiological organisms, air quality and noise decibels measurement.[564]

The Agency enforces compliance with the provisions of the Regulation, by serving an operator the required notices where the Agency is of the opinion that an operator has contravened, is contravening or is likely to contravene any condition of the permit,[565] failing which the permit is suspended until its holder complies with the regulations and conditions.[566]Furthermore, any facility contravening the provisions of the regulations may be sealed by the Agency. Any human person charged for any offence under the regulations shall be liable on conviction to a fine not exceeding ₦200,000.oo or imprisonment for a term not exceeding 2 year or both and an additional fine of ₦5,000.oo

[556]Reg. 5.
[557]Regs. 6 – 7.
[558]Reg. 4.
[559] Reg. 8 – 9.
[560] Reg. 10 – 11.
[561] Reg. 12, and 16 – 19
[562]Regs. 20 – 23.
[563]Regs. 24 – 26.
[564]Regs. 28 – 35.
[565]Regulations 42 and 43.
[566]Regs.44 and 45.

for every day the offence subsists. Where the offence is committed by a company, it shall be liable on conviction to a fine not exceeding ₦1,000,000.oo and an additional fine of ₦50,000.oo for every day the offence subsists.[567]

Commendably, the Regulations provide for incentives to a compliant company or facility. For example, by regulation 53, any company which demonstrates quality and exemplary environmentally responsible practices is recognised and certified with the Agency's logo and green mark. However, regulation 43 which provides that enforcement notice shall be served on a company which in the 'opinion of the Agency has contravened, is contravening or is likely to contravene any condition of the permit' seems vague. (Emphasis is mine). This is because the opinion of the Agency may be influenced by the executive who exercises control over the Agency. Thus, the Agency may hardly do justice according to law. In other words, the Agency's officials may always carry out the dictates of their hirer against perceived opponents who have investment in any of the sectors regulated under the regulations. It is submitted that the phrase 'in the opinion of the Agency' should be expunged. In its place, it should be provided thus: 'as shall be determined by the court or special tribunal'. That is:

> 43(1) On the application of the Agency, or concerned or affected individual an enforcement notice shall be served as shall be determined by the court or special tribunal, where a company has contravened, is contravening or is likely to contravene any condition of the permit'.

The above view would no doubt tackle the problem of political witch-hunt of perceived opposition. It is firmly viewed that special tribunals like environmental and mobile courts may be established to fast-track cases of environmental violations. This would tackle the delays experienced in the usual or conventional dilatory court system for civil and criminal justice.

4.2.3 **Mining and Processing of Coal, Ores, and Industrial Minerals Regulations, 2009**[568]

[567] Regs.51 and 52.
[568] Official Gazette, No. 63, Vol. 96, S.I. No. 31, Govt. Notice No. 284, pages B1147 – 1185.

These Regulations have a total of 48 provisions/regulations, which are arranged into 13 parts.[569] In line with up-to-date cleaner production technologies and best practices, the purpose of the Regulations is to minimize pollution from the activities of mining and processing of coal, ores and other industrial minerals.[570]In summary, the purport of the law is that mines using old operating method shall take necessary measures to limit risks by installing leachate collection tanks while those with new designs shall evaluate their installations and ensure that risks of pollution or accident are prevented. Similarly, tailings[571] containing heavy metals or other toxic materials or substances shall be treated to acceptable level before disposal; mine water containing heavy metals or other toxic materials or substances shall be treated to acceptable level before disposal, heaps, dumps and spent solutions shall be detoxified to reduce deleterious chemical components such as cyanide, acidity and metal loadings while acid mine drainage testing shall be carried out by the facility throughout the operations and closure and burrow pits containing mine water shall be safely secured.

Every facility shall while maintaining sustainable relationship with its host community, have pollution monitoring and control units (to be manned by personnel who are duly accredited by NESREA), following which liquid discharges from the facility shall be analysed and reported monthly to the nearest office of the Agency.[572] It is noteworthy that facilities which demonstrate exemplary and quality environmental practices is accorded recognition by the Agency and awarded with the Agency's green mark.[573]

[569] Part I – Preliminary issues; Part II – General permit, Monitoring, enforcement and incentives; Part III – Effluent limitations; Part IV – Sampling and analysis; Part V – Industrial waste water monitoring and reporting; Part VI – Enforcement; Part VII – Offences under effluent limitations; Part VIII – Penalty; Part IX – Emissions limitation; Part X – Noise pollution and control; Part XI – Guidelines and codes of practice; Part XII – Audiometric testing and compliance verification; and Part XIII – Interpretations.
[570]Regs. 1 – 3.
[571]Waste left after ore has been processed or extracted from the rock.
[572]Regs 5 and 7.
[573]Regs.8 and 9.

The Regulations also distinguish between effluents[574] and emissions.[575]Similar to other Regulations,[576] these Regulations also provide for effluent limits, management of oil station and fuel dumping sites and the Polluter Pays Principle.[577]Thus, while managing oil station and fuel dump sites, facilities that discharge effluents or wastewater generally must have the requisite permit to do so and must also treat it to an acceptable limit as stipulated by the Regulations under regulations 10–12. Following an emergency response plan of the measures to be taken by a facility in the event of discharge or deposit of deleterious substance, the liability for the collection, treatment, transportation and final disposal within specified standards shall be borne by the facility generating the wastes.[578] In other words, based on polluter pays principle the facility which generates waste is liable for the cost of clean-up, remediation, reclamation, compensation of affected parties and cost of damage assessment and control.

Consequently every facility must keep data of all discharges in course of its activities, collect samples of the discharges, analyse same in approved laboratory and report to the Agency in line with Annual Monitoring Report, Monthly Effluent Discharge Monitoring Report, and Incident Report in compliance with environmental monitoring plan.[579] Such records made available to the Agency shall be retained for at least 5 years and throughout the course of any litigation arising therefrom.[580]

It shall be the duty of the Agency to ensure compliance with the conditions of permits under the regulations. For example, a mining employer must ensure that hearing protectors are worn by any mining employee who is exposed to an 8 – hour time weight

[574]Regs. 10 – 29.
[575]Regs. 30 – 35.
[576] For instance, Electrical/Electronic Equipment (EEE) Sector Regulations in Regulation 7; 15; 16; 17; 21; 27 – 32; and the Textile, Wearing Apparel, Leather and Footwear Industry Regulations in Regulation 5; 15; 16; 21, and 22.
[577] See Regulation 10; 11; 12 and 13.
[578]Regs.13 and 14.
[579]Regs. 15 – 19.
[580]Reg. 20.

average of equipment and average of 85 decibels or greater.[581]Thus, on an erring facility, the Agency through registered post, courier or hand delivery at any of the registered offices of the facility issues enforcement notice, enforcement notice reminder and suspension notice respectively as the case may be.[582] On the issuance of suspension notice, a permit is suspended and ceases to have effect. Violating any of the provisions of the regulations with respect to effluent sludge and wastewater discharges is an offence and attracts on conviction a fine not exceeding ₦100,000.oo or imprisonment for a term not exceeding 2 years or both and an additional fine of ₦5000.oo for every day the offence subsists. In the case of a company, it shall be liable on conviction to a fine not exceeding ₦100,000,000.oo and an additional fine of ₦5,000.oo for every day the offence subsists.[583]

With respect to emission limitation, the Regulations provide that facilities or operators involved in mining and processing of coal, ores and industrial minerals shall ensure that their activities conform to prescribed guidelines for safe level of air pollutants.[584] To ensure compliance, a facility is required to monitor its activities, collect and analyse samples therefrom and report same to the Agency as may be specified by the Agency from time to time. Any person who violates the provisions of the Regulations on emission limitations commits an offence and shall be liable on conviction to a fine not exceeding ₦50,000.oo or imprisonment for a term not exceeding 2 years or both and an addition of ₦5000.oo for every day the offence subsists. In the case of a company, it shall be liable on conviction to a fine not exceeding ₦500,000.oo and an additional fine of ₦5,000.oo for every day the offence subsists.[585] These penalties are viewed as been very ridiculous compare to the level of pollution caused to the environment from mining activities.

[581]Regulation 40.
[582]Regs. 23 – 27.
[583]Regs. 28 – 29.
[584]Regs. 30 – 34.
[585]Reg. 36.

With respect to noise pollution and control, a facility shall not exceed permissible noise levels as provided under the National Environmental (Noise Standards and Control) Regulations, 2009. Accordingly, a facility shall ensure that routine controls are put in place to prevent the risks of noise pollution, including hearing conservation programme, hearing protectors, audiometric testing and compliance with the Guidelines and Codes of practice.[586] By regulation 43, any failure to reduce noise to permissible level constitutes an offence which is punishable on conviction with a fine not exceeding ₦50,000.oo or imprisonment for a term not exceeding one year and an additional fine of ₦5,000.oo for every day the offence subsists. In the case of a company, it shall be liable on conviction to a fine not exceeding ₦500,000.oo and an additional fine of ₦50,000.oo for every day the offence subsists.[587]

It would appear that the Regulation while making reference to the registered office of a company erroneously used "any of the registered offices of the organisation" thereby giving an erroneous impression that a company or organisation can have more than one registered office. In *Mark v Eke*,[588] it was held as follows:

> A service on a company, as thus provided must be at the registered office of the company and it is therefore bad and ineffective if it is done at a branch office of the company. See *Watking v Scottish Imperial Insurance Co*. (1889) 23 QBD 285.

From the foregoing, the registered office of an organisation means its headquarters or that office with which it is known from its certificate of incorporation. It is therefore opined that there is need to amend regulation 26 to the effect of delimiting the intension of the draftsperson or the Agency. Accordingly, if the intention of the Agency is that service of a notice on a company/facility at its head office is good service, then that corresponding regulation should read thus: 'Enforcement notice shall be delivered… at the registered or head office of the facility, organisation or company'.

[586]Regs. 37 – 42 and 44 – 45.
[587]Reg. 46.
[588]*[2004] All FWLR (Pt. 200) 1455, at 1478, C; also reported in {2004} 5 NWLR (Pt. 865) 54*.

On the other hand, if the intendment of the regulation is to effect service of the enforcement notice at any of the offices or operational sites of the facility, then it should read thus: 'Enforcement notice shall be delivered… at any of the offices or operations sites of any facility, organisation or company'.

With the above amendment adopted as the case may be, it would prevent any objection on proper service that may be raised by a violating facility with respect to service of an enforcement notice on its company.

In the area of creating public awareness, the enlightenment and awareness programmes of NESREA have been on-going. Severally, the Agency with the instrumentality of its Director-General, Dr.Mrs.NgeriBenebo[589] has cautioned miners on the negative implications of their activities to the environment. Of particular reference are the town hall meetings on Artisanal Mining in Osun and Ekiti States.[590] In the words of Ngeri:

> The increasing frequency of public complaints of the negative environmental impacts of artisanal mining is unspeakably heavy in terms of deforestation, tailing, abandoned mine pits, and burrow pits which constitute serious environmental degradation, loss of valuable farm lands and avoidable health risks.[591]

Referring to the Zamfara State lead poisoning incident in which many lives were lost to mining activities, the NESREA Director – General also emphasised that industrial minerals such as lead were usually found in association with hazardous elements.[592] It is for these reasons of forestalling unwholesome mining practices that the Federal Government made the National Environmental (Base Metals, Iron and Steel Manufacturing/ Recycling Industries Sector) Regulations, 2011, and the Technical Guidelines on Controlling Blasting.

[589] As at the time of this research.
[590] O Adeosun, NESREA cautions miners on negative impact to environment, National Mirror Magazine of 14/02/12, retrieved February 29, 2016 from http://national mirroronline.net/business/real-estate/31260.html
[591] *Ibid*.
[592] *Ibid*.

At another workshop in Abakaliki, Ebonyi State, the said Director-General had sensitized exploiters and stakeholders on the rudiments of observing environmental rules; emphasising that it was regrettable that the uncontrollable exploration and exploitation of natural resources and other unsustainable activities pollute the air, water and soil. These contribute to environmental degradation, which has become incompatible to human habitation.[593]

4.2.4 **Noise Standards and Control Regulations 2009**[594]

The Noise Standards and Control Regulations have a total of 18 provisions/regulations arranged under five parts.[595] The purpose of the Regulations is to regulate noise levels in order to maintain a healthy environment and tranquility of surroundings for the wellbeing of people in Nigeria.[596]No doubt the environment is affected adversely, following noise generated as a result of various activities from social or religious functions, factory processes using mechanical machineries, generators and blasting.

The Regulation therefore provides for permissive noise levels for various activities including:factory, workshop, public announcement or address system/device, construction site, place of entertainment, area of worship, school, vehicles or engines and quarry or mine.[597] The owner or operator of any activities capable of generating noise is duty-bound to control, or mitigate the noise level within permissible limits. For residential areas, it is prohibited for noise resulting from any activities to constitute a disturbance to the receptor or neighbourhood for more than 2 minutes or as may be prohibited by the Agency. The activities regulated for noise include: yelling, laughing, clapping, shouting, hooting, pounding, whistling, singing, detonating fireworks or

[593] G Osuji, Our environment uninhabitable, NESREA DG laments, accessedon 29 February, 2016 from <http://odili.net/news/source/2012/feb/22/522.html>
[594] Official Gazette, No. 67, Vol. 96, S.I. No. 35, Govt. Notice No. 288, B1299 – 1318.
[595] Part I- Permissive noise levels; Part II- Control and mitigation of noise; Part III- Permit for noise in excess of permissible levels; Part IV- Enforcement, and Part V- General provisions.
[596]Reg. 1.
[597]Reg. 2 and First Schedule to the Regulations.

explosive devices not used in construction, etc. However, certain activities are not regulated for noise, including:

(a) Loudspeaker or siren for fire brigade, ambulance and the police.

(b) Any emergency measure to safeguard health or welfare.

(c) Horn of a vehicle for purpose of giving warning of its position.

(d) Education class or recreation in or around an educational institution.

(e) Athletics or sports.

(f) Cultural activity, show, funeral service or rite, or marriage ceremony between 10.00am and 8.00pm.

The Agency may, in consultation with States and Local Government authorities place conspicuous sign posts or by issue of notice in a widely circulated newspaper designate any area as a Noise Control Zone for the purpose of controlling noise levels.[598] Thus, application for noise permits is made to the Agency by an owner or occupier of premises whose facility may likely emit noise in excess of permissible levels.[599] The noise permit may be revoked for failure by the permit holder to satisfy the conditions.[600]

Contravention of any of the requirements for noise control attracts a fine of ₦5,000.oo for every day the offence subsists and on conviction to a fine of ₦50,000.oo or imprisonment for a term not exceeding one year or to both. Where the offence is committed by a company, it shall on conviction be liable to a fine not exceeding ₦500,000.oo and an additional fine of ₦10,000.oo for every day the offence subsists.[601]

The creation of liability (ie fine of ₦5,000.oo for everyday) by Reg.17(1)(k) on a person who is alleged to have contravened the requirements or conditions of a noise permit is bad in law. Such regulation offends the principle of fair hearing and obviates from been convicted first before payment of penalty. Payment of a penalty for mere

[598]Reg. 6.
[599] Reg. 7 – 8.
[600]Reg. 9.
[601]Reg. 17.

allegation of contravening a requirement of a permit; and paying another penalty after conviction amounts to double jeopardy and offends the essence of criminal law. Rather, it is opined that the offence and liability sections should attract larger sum as penalty for any conviction. This would better serve the purpose of the law, instead of the impression as it is; which tends to condemn a person before he is actually tried.

By regulation 16, it is provided as follows: 'The Agency and its Agents shall not be held liable for any act or omission that may arise in the cause of enforcing the Regulations'.It is viewed that these provisions which exonerate the Agency from any liability occasioned in the course of enforcing the noise regulations is anathema to the interest of the public and duty of care. It is suggested that the said provision should be expunged completely; or amended to the extent that protects the public interest. For example, it could be couched thus: 'The Agency shall take all reasonable steps to mitigate any of its actions under these Regulations which offends or affects the public interest'.

4.2.5 **Textile, Wearing Apparel, Leather, and Footwear Industry Regulation 2009**[602]

These Regulations have a total of 57 provisions/regulationsarranged under 9 parts.[603] The purpose of the Regulations is to enhance environmental governance by preventing and minimizing pollution from the operations and ancillary activities of the textile wearing apparel, leather and footwear industries.[604] Thus, every facility in the sector must carry out an EIA, following which it submits its environmental impact statement (EIS) to the Agency before commencement of operations. Similarly, every facility must submit its Environmental Audit Report (EAR) for existing industries every 3 years,[605]in addition to an environmental management plan (EMP) for verification and approval where a facility

[602] Official Gazette, No. 66, Vol. 96, S.I. No. 34, Govt. Notice No. 287, pages B1251 – 1296. A copy costs ₦350.oo.
[603] Part- 1; Part II- Sampling procedures; Part III- Permits (General provisions); Part IV- Industrial effluent, air monitoring and reporting; Part V- Enforcement; Part VI- Offences; Part VII – Penalty; Part VIII- Incentives; and Part IX- Interpretations.
[604]Reg. 1.
[605]Reg. 2.

is to be decommissioned, transferred or alienated, after the conduct of an environmental audit.

Strictly, the Regulation also projects the adoption of best practices,[606] to minimise waste[607] and the polluter pays principle.[608] It also advocates pollution abatement technologies for air/ atmospheric emissions,[609] noise[610] and collection of samples of air, chemicals[611] and other materials[612] for laboratory analysis. It is therefore an offence to release effluent and sludge into the environment in excess of permissive level.[613]The polluter pays principle shall apply to every facility that pollutes the environment. Consequently, the collection, treatment, transportation and final disposal of waste shall be the responsibility of the facility generating the wastes. Should any adverse impacts result as a result of the facility's activities, the owner shall bear the cost of damage assessment, clean-up, remediation, reclamation or restoration.[614]

In order to check incidents of emission, every facility is required to submit to the Agency its report of sources of emission/ emission data and its emission reduction implementation plan.[615] Thus, a facility which discharges gaseous emission shall treat it to the permissible level as prescribed in the schedule to the Regulations.[616] This is also referred to as pollution abatement for air emissions.With respect to noise standards and control, facilities shall ensure the installation of sufficient controls that prevent risks of noise pollution to be within the prescribed or permissible level.[617]

To determine compliance with issued licence/permit, a facility shall routinely collect and analyse samples of chemicals, bacteria, air and noise measurements in a

[606]Regulation 6.
[607]Regulation 7.
[608]Regulation 5.
[609] Regulation 21 and 22 and Schedule IV.
[610] Regulation 23; 24; 25; 26; 34 and Schedule VII.
[611]Schedules VIII and IX.
[612]Regulation 27; 28, and 33.
[613]Regulation 49. See also the limits in Schedule II of the Regulations.
[614]Reg. 5.
[615]Regs.18 and 20.
[616]Reg. 21.
[617]Regs. 23-26 and schedule VII to the Regulations.

laboratory approved by the Agency.[618]To control, industrial effluent and emission, a permit holder must comply with certain monitoring and reporting requirements of the Agency including, but not limited to: submission of incidence report and monthly effluent data to the Agency's field office at least every quarter;[619]and installation of monitoring equipment approved by the Agency to facilitate accurate observation, sampling and measurement of waste discharges as allowed by the permit.

Violation of any of the provisions of the Regulations constitutes an offence and on conviction attracts a fine not exceeding ₦200,000.oo or imprisonment for a term not exceeding 2 years or both and an additional fine of ₦5,000.oo for every day the offence subsists. Where the offence is committed by a company/facility, it shall on conviction be liable to a fine not exceeding ₦1,000,000.oo and an additional fine of ₦50,000.oo for every day the offence subsists.[620]

The most important aspect of the Regulations is the part on incentives.[621] It stipulates that the Agency shall recognise and encourage facilities which maintain commitment to quality and exemplary environmental compliance with environmental leadership awards, including the certification of the facility with the NESREA green mark. This provision is commendably innovative. However, on the requirement of an erring facility reporting itself to the Agency, it is viewed that such provision is hardly feasible as it contradicts the natural course of events. Such provision should be expunged and in its place a provision to the effect that: 'On its inspection of a facility, the Agency shall verify for itself from the records and documents of the facility any violation or failure of non-compliance with the Regulation'.

There is need to increase the monitoring team of the Agency to ensure a wider coverage of the industries with their presence. This would curtail the violating activities

[618]Regulations 27, 28, 29, 30, 31, 32, 33 and 34.
[619]Reg.36.
[620]Reg. 51.
[621] Regulations 52 – 55.

of many industries in hidden locations which engage in effluent emission and excessive noise generation without any licence and regulation of permissible levels of such effluents and noise from plants and machinery. This can be achieved by employing more capable personnel to constitute the monitoring team of NESREA in this regard and other related issues.

4.2.6 **Construction Sector Regulations, 2011**[622]

The construction sector is critical to the Nigerian economy in terms of employment generation and development of infrastructure. However, the sector has also impacted negatively on the environment and public health, in the area of uncontrolled dust and elusive emission, abandoned debris and overburden and poor storm water management; hence the need for this Regulation.

Arranged into seven parts, the Construction Sector Regulations have 29 provisions/regulations.[623] Strictly, the regulations are made to regulate activities in the construction sector in Nigeria. However, so far it is still at its nursery stage of achieving success. There is yet no clearly or reported decided case laws on the enforcement of compliance with the Construction Sector Regulations. It would also appear that the regulations are yet to be enforced for every construction work, except for those ones which require mandatory conduct of an EIA such as public facilities, namely: market, road, school, hospital and any high rise building. The Regulation however, provides that every facility[624] or operator[625] shall be bound or regulated by the Construction Sector Regulations.[626]

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[622]Fed.Rep. of Nigeria Official Gazette No. 46, Vol. 98, S.I. No. 19.
[623] Part I – General Provisions (regulations 1 – 5); Part II – Specific Provisions (Regulations 6 – 20); Part III – Permit (Regulation 21); Part IV- Enforcement (Regulations 22-26); Part V – Offences (Regulation 27); Part VI – Penalties (Regulation 28), and Part VII – Interpretations (Regulation 29).
[624] Facility means physical set-up or equipment for construction activities. See: Reg. 29.
[625]Operator means a person or body corporate owning, developing, executing, using or managing a construction project or any combination of these. See: Reg. 29.
[626]Regulation 29.

The purpose or thrust of the Construction Sector Regulations is to prevent and minimize pollution from construction, decommissioning and demolition activities to the Nigerian environment.[627] To achieve this purpose, every facility or operator applying new designs or proposing new projects must comply with the duty of care; apply cost-effective, up-to-date and best available technology in order to minimize risk of pollution or accident.[628] Consequently, every operator or facility shall do the following:

(a) Carry out an EIA for new projects or modification, including expansion of existing ones before commencement of activity;

(b) Submit an Environmental Audit Report (EAR) of its project/operational base on three (3) yearly basis or as may be required by the NESREA; and

(c) Submit an Environmental Management Plan (EMP) as appropriate.[629]

From the foregoing, it is viewed that to achieve the purpose for which the regulations are made requires that encompassing public awareness and enlightenment on construction works be embarked upon. This awareness would no doubt encourage the least individual who engages in any construction activities to start obeying the regulations. A developing nation like Nigeria requires the encouragement of the regulatory agencies to assist the populace in obeying the law through public awareness on radio, television, newspaper publications, seminars, and the use of the civil society groups;not only by punitive measures.

It is instructive that even though an Environmental Audit Report had been submitted to the Agency, where such project is to be decommissioned, transferred or alienated for any reason whatsoever, a fresh EAR shall be conducted and submitted to the Agency by the owner/operator for verification and approval.[630] It is opined that since an EAR is expected to be carried out every 3 years, there is no need for fresh EAR on the

[627]Regulation 2(1).
[628]Regulations 2(2) and 3(1) and (2).
[629]Regulation 3(3).
[630]Regulation 3(4).

transfer of a project/facility if it is within the subsisting period of an Audit report. It would appear that the Agency now has a primary drive for money. This is particularly so, as virtually all approvals by the Agency requires some form of payments of fees.[631]

The regulations are however commendable for stipulating its schedule of best practices in the construction sector. Accordingly, each of the requirements of the guidelines contained in the schedules must be complied with in order to avert the penalties or consequence of non-compliance. There are ten schedules which are: Schedule I- Best practices;[632] Schedule II- Guide Template for Emergency Procedures in Construction Industry;[633] Schedule III- Guideline for preparing Environmental Management Plan (EMP);[634] Schedule IV- Organisational System and the Functions of Pollution Control Managers;[635] Schedule V- Incident Report Form;[636] Schedule VI- Recommended Personnel Protection Equipment according to hazard type;[637] Schedule VII-Noise limits for various working environment;[638] Schedule VIII- Minimum limits for workplace illumination intensity;[639] Schedule IX-Blasting Guidelines[640] and Schedule X-Close-out Guidelines.[641]

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[631] Under the Permitting and Licensing System Regulations, 2009, S.I. No. 29, the Agency prescribes different fees for: application forms, permit, processing, approval, re-hearing, review, amendment and appeals on suspension and cancellation of licence.

[632]Reg. 4(1). Best practices under Schedule I, implies that *inter alia*, every operator shall adopt *in-situ* waste reduction and pollution prevention strategy such as building containment equipment for spills in case of accidental discharge. Also, an unusual or accidental discharge of wastes from a construction site shall be reported to the nearest office of the Agency within 24hours of the discharge.

[633]Reg. 4(3) (g) and 5. The Guide template in Schedule II is arranged thus: Step 1- Establish a planning Team; Step 2- Analyse capabilities and Hazards; Step 3- Develop the plan; and Step 4- Implement the plan.

[634] Reg. 3(3)(c). EMP Guidelines under Schedule III stipulates that every EMP must describe the Policy, Planning, Implementation/operation, Checking and Corrective action, and Management Review and Commitment.

[635]Reg. 12(d). Under Schedule IV- The hierarchy is thus: Pollution Control Manager, Pollution Control Supervisor, Pollution Control Officers for planning and operations respectively.

[636]Reg. 18. Schedule V provides the content of an incident form to include: name and address of facility, number of employees, department where the discharged occurred, place of the discharge, causes of discharge, nature of the discharge-ie whether gaseous, solid or liquid; any victims, etc.

[637] Reg. 4(4)(c) Schedule VI provides that for eye and face protection, suggested PPE is to wear safety glasses with side shields against workplace hazard such as flying particles, molten metal, liquid chemicals, gases or vapours, light radiation. Wearing of helmet is for head protection against falling objects and overhead power cords. Hearing protectors such as ear plugs or muffs are to protect against noise and ultra sound. Gloves are for hand protection against hazardous material, cuts, extreme temperature.

[638] Reg. 10 In Schedule VII – Permissible noise limits for classroom is between 35 – 4dB (A); Hospital is between 30 – 35dB(A) and Residential Areas at night and day are 45 dB and 55dB respectively.

[639]Reg. 8. In Schedule VIII – Minimum limits for workplace lighting includes: welding, simple assembly, packing- 200 lux; reading, sorting and offices - 500 lux; garage, warehouse or storage – 50 lux.

All new construction projects which require mandatory EIA or such projects capable of generating significant waste must have a site waste management plans, records of which the collection, treatment, transportation and final disposal of the waste shall be submitted to the Agency at the end of the project, before close-out.[642]

Strictly, the construction sector regulations are guided by the polluter-pays-principle. Thus, where an incident in the course of construction activities results in an adverse impact on the environment, whether socio-economically or health-wise, the operator shall make such report to the Agency in the prescribed format[643] and shall be responsible for the cost of damage assessment, control and clean-up; remediation; reclamation and or restoration.[644]

By regulation 22, where the Agency is of the opinion that an operator has contravened, is contravening or is likely to contravene any condition of a permit, it shall serve such operator an enforcement notice. The notice shall specify the matters constituting the contravention and the steps that must be taken within a period to remedy it.[645] A second notice shall be served on an operator where he fails to comply with the initial notice, failing which issuance of a suspension notice or any other punitive action becomes necessary.[646]

The effect of a suspension notice is the suspension of the permit or licence for the construction of the project or facility. Where violation of the regulations persists, the Agency shall enter and seal such facility to compel compliance.[647] On the other hand where the violation is abated, the Agency withdraws the suspension after verification of

[640]Reg. 16. Schedule IX provides blasting design and procedure must be used and the deposition and detonation of explosives shall be carried out by a licensed individual or body corporate.
[641]Reg. 20. Schedule X provides that – All machines, equipment and make shift buildings shall be removed and the site re-vegetated.
[642]Reg. 6.
[643] As specified in Schedule V to the Regulations
[644] Reg. 18
[645] Reg. 22(1)(2).
[646] Reg. 24(1)(2).
[647]Reg. 26(3).

compliance.[648] Strictly, all notices for the purpose of enforcement shall be delivered by any of the following means, including: by hand, registered post/courier, electronic transmission, or pasting at the facility/ registered premises of the organisation.[649]

With respect to penalties, a distinction is drawn between an artificial and a natural person. Thus, where an individual violates any of the provisions of regulation 27 which stipulates offences, he shall be liable on conviction to a fine not exceeding ₦200,000.oo or imprisonment for at least 6 months and an additional fine of ₦5,000.oo for each day the offence subsists. On the other hand, a company shall be liable on conviction to a fine not exceeding ₦5,000,000.oo and an additional fine of ₦50,000.oo for every day the offence subsists.[650]

It would appear that the basis of these regulations is to track and make culpable or responsible the project proponent or owner, as well as the project contractor, sub-contractor, operator or executor as the case may be for any environmental impacts of the project. This is why it binds both the facility and operator. In the past, and as still appears to be the position enacted in the EIA Act, it is the project proponent who has the responsibility of ensuring that an EIA is carried out for the proposed project. Consequently many project contractors/operators usually renege from carrying out an EIA and complying with various requirements of the law in protecting the environment.

In order to bridge the gap, particularly, as the Agency finds it difficult most times to go after a State government which is the proponent of the project; these recent regulations aim to make virtually every person (natural or artificial) culpable for non-compliance with environmental laws/regulations. In other words, whether one is the proponent of the project or not, one would be held liable for non-compliance with the

[648]Reg. 26(2).
[649]Reg. 25.
[650]Reg. 28.

EIA, provided one is involved in the project as a contractor, sub-contractor or operator of the facility. It is therefore expected of project executors to enquire and ensure that the project complies with the EIA requirements. It is submitted that there is need to amend the EIA Act to incorporate this novel strategy of achieving compliance to environmental impact assessment responsibilities. Otherwise, it is doubtful whether the effect of these provisions of the Construction Sector Regulation, would have the force of law, if it is not expressly provided for under the principal statute enacted to regulate environmental impact assessments; that is the EIA Act.

It is firmly viewed that the provisions of the regulation which are probable, speculative or prospective can hardly meet the purpose of justice. For example Regulation 22(1) provides that service of enforcement notice is carried out where the 'Agency is of the opinion that an operator has contravened, is contravening or is likely to contravene any condition of the permit'. It is submitted that the opinion of the Agency at a particular time and about an operator may not reflect true/fair judgment. In other words, an operator may be at the mercy of the representative or inspectors of the Agency where he does not comply with their inordinate demands. This is usually the case in a corruption ridden society. Similarly, an opinion of the Agency that an operator is likely to contravene any condition of the permit is speculative. This is because it is trite that even the devil does not know what is in the mind of man. Thus, how can the Agency guess correctly that an operator is likely or about to contravene the condition of a permit?

It is submitted that the couching of that particular regulation could read thus:

> An enforcement notice shall be served by the Agency on an operator or facility where such operator or facility contravenes any of the conditions of a permit under these Regulations.

Furthermore on what constitutes offence under the Regulations, regulation 27(5)(c) provides as follows:

> 27(5)It shall be an offence if an operator:

(c) dismisses, suspends or sanctions employee(s) who report contravention of these Regulations.

The foregoing regulation though commendable with respect to protecting or securing an employee whistle blower from losing his employment or being sanctioned by his employer; it is however doubtful whether the applicability of the regulation is feasible in light of the provisions of labour laws which regulate employer-employee relationships. Labour relationship presupposes a contract of employment which could be terminated among others by notice or in any other way in which the contract is held to be terminated, for example, expiry of the period of employment or death of t worker.[651] Accordingly where a contract of employment can be terminated by notice, either party to the contract may terminate it on the expiration of notice given by him to the other party of his intention to do so; and all that is required is for the notice to be in writing if it is for a period of one week or more.[652]Thus, it is viewed that where reporting the activities of the operator or organisation to any authority, including NESREA, is in the opinion of an employer a violation of the company's confidence of secrecy by an employee, it may attract termination of the employee's contract of employment as the consequence for what the company may term "breach of trust".

This is notwithstanding the provision in the NESREA Regulations that sanctioning such an employee constitutes an offence. The only remedy available to such sacked employee as held in *A.T. & P. (Nig) Ltd v. Gbagu*,[653]is to sue the employer for damages, where he was not served the requisite notice of termination or that the termination was wrongful in the sense that it was without just cause or excuse on the part of the employer.

It is submitted that it is not the duty of the Agency in the name of enforcing compliance with the Regulations to interfere with an existing employer-employee

[651]Labour Act Cap L1 LFN, 2004, s. 9(7).
[652]Labour Act, s. 11. Notably, a week's notice is required where the contract has been for a period of two years, but less than five years; and a month's notice where it had continued for five years or more.
[653](1966) NCLR 56 at 69.

relationship. It is interesting that conviction of an operator for any offence (including that of dismissing or sanctioning its whistle blower employee) attracts punitive penalties against such operator. However, it is opined that whistleblower employees, who are dismissed, suspended or sanctioned, should be compensated adequately from the government coffers or sovereign wealth fund. This way, a whistleblower would not be cowed by the fear of his employment being terminated on account of reporting his employer for non-compliance with the Regulations. Pecuniary compensation would better protect the interests of whistleblowers or employees who report violating operators instead of punishing an employer who terminates the employment of an employee, as entitled under the labour law.

4.2.7 **Control of Bush, Forest Fire and Open Burning Regulations, 2011**[654]

These Regulations apply to persons or companies that engage in bush/forest open burning for hunting, farmland, electronic wastes, agricultural wastes, municipal wastes, automotive parts, asbestos or industrial wastes, dead animals, plastics, rubber products, tyres or waste oil.[655] Arranged into four parts;[656] these Regulations have a total of 24 provisions/regulations. The principal thrust of the Regulations is to prevent and minimize destruction of the ecosystem[657] through fire outbreak and burning of materials that emit hazardous substances.[658] Thus, burning of any of these materials must be with a permit from the Agency upon the payment of prescribed fees.[659]

It shall be the obligation of the permit holder to:

(a) Give notice to the enforcement officer of the Agency in charge of the area where the land is located.

[654]Official Gazette No.42, Vol. 98, S.I. No. 15, Govt. Notice No. 129, pages B481 – 500. A copy costs ₦1,500.oo.
[655]Reg. 2.
[656] Part I- Preliminary; Part II- Control of bush/forest fire and open burning; Part III- Offences and Penalties; and Part IV- Miscellaneous.
[657] Ecosystem is the structural and functional unit of biosphere or segment consisting of living beings and the physical environment both interacting and exchanging materials between them.
[658]Reg. 1.
[659]Regs. 3 – 6.

(b) Give notice to the occupier of any adjoining lands,

(c) Provide appropriate measures to attend the fire in order to prevent its spread beyond the marked area.[660]

With respect to bush burning of plant wastes or any open burning of an area, a permit is also required. In case of accidental fire spreading beyond the area cleared for burning, the permit holder shall immediately notify the nearest fire service and the Agency and shall within 24 hours of the suppression of fire report the immediate cause to the Agency.[661]

The Agency may revoke or refuse to issue a fire burning permit, where after inspection of the area, it is satisfied that no matter the precaution taken, it constitutes a source of danger and may spread.[662] In the same vein, burning of rangeland or plantation is an offence, in the absence of fire spread control equipment and measures.[663] The use of tractor, engine and other farm machineries is also regulated to the extent that their exhaust pipes must be vertical (pointing up-wards) and they must carry the appropriate fire extinguishers.[664]Similarly, use of bee smoker device, explosives and fireworks is prohibited, except there is on ground adequate equipment (fire extinguishers) and arrangements to prevent fire spread.[665]

Strictly, burning of bush or forest for the purpose of hunting is prohibited.[666] Furthermore, the Regulations ban all open burning, except for barbecue grills, outdoor cooking device, small camp fire, on-site burning of organic agricultural wastes for

[660]Reg. 7.
[661]Regs. 8 – 11.
[662]Reg. 12.
[663]Reg. 13.
[664]Regs. 14 – 15.
[665]Regs. 16 – 18.
[666]Reg. 19.

subsistence farming, ceremonial bonfires, and open fire to control invasive plant and insect species.[667]

In the event of any fire outbreak, the details of: date of occurrence; cause of the fire; approximate area burnt; estimate of total loss caused by the fire; time when fire was noticed and extinguished, and persons and equipment used to suppress the fireshall be sent to the Agency in June each year by an enforcement officer in charge of a State.[668]

Violation of any of the provisions of the Regulations is an offence and attracts on conviction a fine not exceeding ₦50,000.oo or imprisonment not exceeding 3 months or both. Where the offence is committed by a company or facility, it shall on conviction be liable to a fine not exceeding ₦1,000,000.oo and an additional ₦20,000.oo for every day the offence subsists.

We commend this Regulation for its ingenuity in addressing incidents of bush and forest burning, particularly the prohibition of bush/forest burning for hunting and all open burning, except the exceptions in regulations 19 and 22, for instance bush burning for peasant farming. However, the fines of ₦50,000.oo and ₦1,000,000.oo against an individual and company respectively for violation of the Regulations seem illusory. This is because the extent of damage was not considered with respect to the damage that may have been caused by the fire occurrence. Thus, it is opined that the penalty section should in addition to the provided penalties provide that the offender will also reasonably repay the extent of damage to adjoining property as a result of the fire occurrence. This aspect of liability will no doubt instill more caution in permit holders in exercise of same. It is also submitted that there is need for enlightenment campaigns by NESREA and all relevant MDAs, State, Local governments, and non-governmental organisations about

[667]Reg. 22.
[668]Reg. 20.

these restrictions of bush burning and fireworks without the required permits. The display without precaution of fireworks during festive periods in Nigeria is a case in hand.

4.2.8 **Control of Vehicular Emissions from Petrol and Diesel Engines Regulations, 2011**[669]

Strictly, the Regulations prohibit vehicle engine unit that emits excess pollutants to the environment and importation of two-stroke engines. However, there is yet no ban on importation of four-stroke engines vehicle.A four-stroke engine describes an internal-combustion engine in which the piston makes four strokes to complete a cycle, unlike old model technology where the engine makes only two strokes and capable of emitting more carbon monoxide to the environment.Divided into five parts, the Regulation has a total of 32 provisions/ regulations and 11 Schedules.[670] The purpose of the Regulations is to restore, preserve and improve the quality of air. The standards contained therein provide for the protection of the air from pollutants, as well as, take into account citizen's right of access to clean air and health.[671]

Importantly, the Regulation is arranged into three major aspects, namely:

a) Control of vehicular emissions from petrol engines;[672]

b) Control of gaseous emissions from petrol engines;[673]

c) Control of vehicular emissions from diesel engines[674]

The control of vehicular emissions from petrol engines applies only to new motor vehicles registered after 28th April, 2011 and to motor vehicle which is already registered but whose engine has been replaced.[675] Similarly, with effect from 28th April, 2011, a ban is placed on manufacturing, assembling or importation of diesel engine vehicles that have

[669] Official Gazette No. 47, Vol. 98, S.I. No. 20, Govt. Notice No. 134, pages B615 – 635.
[670] The parts are as follows: Part1 – Control of vehicular emissions from petrol engine; Part II – Gaseous emission control from petrol engine; Part III – Control of vehicular emission from diesel engine; Part IV – Offences and Penalties, and Part V – Miscellaneous.
[671]Regulation 1.
[672] Part I.
[673] Part II.
[674] Part III.
[675]Regulation 2.

no emission reduction technology.[676] In order to encourage the importation of vehicles with emission reduction technology, there is a ban on the importation of two-stroke engines. Instead, the importation of four-stroke[677] engines is preferred for its technology of emission reduction; thereby placing restriction on the installation or replacement of vehicle engine units which emit pollutants in excess of prescribed standards.[678] This restriction applies only to motor vehicles that are used on the road, excluding motor vehicles used for racing in approved racing events.[679]

The regulations prescribe the emission test or control standard, to be conducted or verified by the Agency's licensed facility, approved assembler, manufacturer or importer.[680] To stop further operation of a vehicle which emission test has contravened acceptable standards, the Agency or any authorised officer may issue a prohibition order (attached to a conspicuous spot on the vehicle windscreen) which shall not be removed except with a written approval of the Agency.[681] Furthermore, by regulations 13 and 27, vehicle engines should not be kept in enclosed areas. Thus, a person shall not allow either a petrol or diesel engine of a motor vehicle to idle for more than 5 minutes in an enclosed or partially enclosed parking area or terminus.

To aid inspection of compliance by the Agency, the vehicle owner shall keep records of various tests carried out on the vehicle in a log book containing the vehicle registration number, date, time and result of the test.[682] To operate and maintain an approved or licensed facility, fleet operators,[683] shall carry out the smoke test on all their

[676]Regulation 20.
[677] With effect from 1st January, 2015 all new model motor vehicles shall comply with the emission standard of gaseous pollutant of carbon monoxide prescribed in Schedule II to these Regulations. See regulation 3(6).
[678]Regulations 3 and 17.
[679]Regulation 4.
[680]Regulations 5, 6, 8, 9, 16(2), 19 and 21.
[681]Regulations 10, 11, 12, 24, 25, and 26.
[682]Regulations 14 and 28.
[683] Fleet operator is a company, firm, society or other body of persons or any person who owns and operates 5 units or more of motor vehicles.

motor vehicles periodically or more frequently as may be directed by the Agency in writing.[684]

The offence section is stipulated under regulation 30. Against an individual, he shall be liable on conviction to a fine of ₦50, 000.oo or 1 year imprisonment or both such fine and imprisonment and an additional fine ₦1, 000.oo for every day the offence subsists. In respect of corporate bodies, it is ₦500, 000.oo and additional fine of ₦20, 000.oo for every day the offence subsists.

Ensuring that vehicles that emit excess carbon-monoxide are taken off the roads, these Regulations to a great extent call for synergy with the Federal Road Safety Commission in its role of making regulations to ascertain the road worthiness of vehicles.[685] However, enforcing compliance with regulations 3 and 17 to 'ascertain that petrol engines to be installed do not emit pollutants in excess of allowable limits' is difficult. Owing to smuggling into Nigeria of fairly used vehicles commonly called 'second handed' or '*tokunbo*' vehicles, the number of petrol and diesel engines replaced on daily basis in Nigeria is alarming. It is therefore opined that enforcing this Regulation will remain illusory until municipal laws adopt the Regulations. This is because most of the assemblage and installations are done in remote areas and locations far from the reach of the poorly-staffed NESREA.[686] The Federal Road Safety Corps (FRSC) must be made to do their work- the primary purpose of which it is established.[687] No doubt, it is commendable that NESREA has come up with a Regulation such as this. However, they must start from simple execution of the law by collaborating with FRSC to start impounding the smoking vehicles which are legion on the Nigerian roads, cities, towns

[684]Regulations 15 and 29.
[685]Federal Road Safety Commission (Establishment) Act, 2007, ss. 5(h); and 10.
[686] It is opined that NESREA is poorly staffed compared to the rising population of Nigeria and environmental challenges.
[687] That is, to ensure road worthiness of vehicles and compliance with driving safety codes on Nigerian roads. See: Federal Road Safety Commission (Establishment) Act, 2007, ss. 5(h) and 10(9).

and villages.[688] This will go a long way to restore confidence in the possibility of enforcing the Regulations.

It is also imperative to have a directory of all certified assemblers, manufacturers and importers. This achieved, the Agency can concentrate on monitoring compliance with them. These operators must also be given level playing ground in terms of taxation. In other words they should not be over-taxed or double-taxed, considering imports and export duties realities. With the directory, any other person or company who is not certified assembler, manufacturer, or importer but engages in it should be prosecuted and where liable punished adequately.

Notably, the requirement that an assembler, manufacturer or importer shall conduct the test to verify exhaust emission control[689] will only achieve near success. This is because if the Agency does not have expert staff in such specialties, a purported assembler or manufacturer (even though licensed) will hardly come out with results which may likely affect his trade. This is worse where such assembler has interest in the importation of the vehicle parts to be tested. Accordingly, many of the assemblers would seemingly conclude that Nigeria is not yet developed to adopt such strict standards of verifying exhaust emissions.

An important area which was not contemplated by the Regulations is the road-side motor mechanics, usually involved in uncoupling and assembling of vehicle engines. In this wise, it is suggested that even though the Regulations did not state the meaning of 'assembler', a definition of this term should be incorporated into the Regulation and it should include 'road-side motor mechanics'. Undoubtedly, by this suggested amendment, a lot would be required of the Agency in terms of creating more public awareness and educating the mechanics on the need to get certified, registered or licenced with the

[688] Particularly, Regulation 8(2) provides that every petrol engine which is in use, in operation or is capable of being operated shall not emit visible smoke from the exhaust pipe. This provision is *imparimateria* with Regulation 22(2) with respect to diesel engine vehicles.
[689] Regulation 5 and 19.

Agency for the purpose if the Regulations. This will not only generate more funds for the Agency, it would be a step in the right direction at ensuring compliance with the Regulations.

Furthermore, the enactment that the Agency 'may' require any assembler, manufacturer or importer to conduct such necessary test... at any licensed facility[690] does not import strictness. This usually leaves them at the mercy of operators who they are supposed to regulate. For example, how feasible is it for every vehicle in Nigeria to undergo annual emission testing (as stipulated by regulations 5, 6, 8, 9, 16(2), 19 and 21), where there is a dearth of licensed facilities for that purpose? This trend is worse in the face of many vehicle owners who do not keep logbook that contains their vehicle details. If any success is to be achieved, a lot is required to be done. It is not enough to produce a lot of white elephant projects and irreconcilable laws which are not in tandem with literacy/awareness realities and situation in Nigeria.

This researcher and indeed some expectant Nigerians are also optimistic to see the realisation of the restriction on installation or replacement of engines. Particularly with regulations 3 and 17 read together, it was expected that on or after 1st January, 2015, any new model of motor vehicle must comply with the emission standard of pollutants as prescribed in Schedule III to the Regulations. Regrettably, the ban on diesel engines with no emission reduction technology with effect from 28th April, 2011 has not been realisable in the face of many desperate importers breaking the codes and smuggling into Nigeria many '*tokunbo*' vehicles from neighbouring countries.[691] Many of these smugglers personate Nigerian soldiers, and even Customs officers.

Therefore, the Customs, and other security agencies must have all hands on deck to tackle the monster of vehicle smuggling which violate certified emission reduction technology and general environmental standards of the country. The battle is not solely

[690]Regulation 5.
[691] It is of common knowledge that many fairly used or second handed vehicles are smuggled into Nigeria from Cotonou of Niger Republic.

that of NESREA, considering the fact that it is a baby Agency without arms and ammunition. Thus, for the Agency to succeed, it relies greatly on the security agencies and the Nigerian people as a whole. This is partly why the Regulations identified 'authorised officer' to include a Road Traffic Officer (RTO), Police Officer, Federal Road Safety Corps or any other officer to whom the Agency has delegated its power.[692]

With respect to offences and penalties, it is viewed that although the provisions are commendable, they are however not commensurate to the extent of health hazards/ havoc pollutants emissions cause to the environment and citizens.

4.2.9 **Electrical/ Electronic Sector Regulations, 2011**[693]

Used electrical electronic equipment (UEEE) from developed countries have become highly sought–after commodities in Nigeria in recent years. This is aimed at bridging the gap of the so called 'digital divide' in order to make information communication technology (ICT) equipment available at affordable prices. Consequently, this has however led to a massive flow of obsolete Waste Electrical and Electronic Equipment (WEEE), electronic waste, e-waste or end-of- life electrical/electronic to the country.[694]

Arranged into 9 parts,[695] the Electrical/Electronic Sector Regulations have 70 provisions/regulations. Strictly, the regulations are made to regulate importation, manufacturing, assembling, processing, recycling, distribution and use of electrical/electronic equipment and gadgets in Nigeria. However, from the influx of many poorly and fairly used electrical/electronic gadgets such as: radio, television, phones and ipads; it is still difficult to accept that the regulation has achieved good success so far. Although this researcher was yet to find any reported case law on the enforcement of

[692] Reg. 31.
[693] Official Gazette No. 50, Vol. 98, pages B729 – 797, Govt. Notice No. 137, S.I. No. 23. Made 25th May, 2011, but commenced 28th April, 2011 (₦3,500).
[694] Schedule II to Regulation 3(2): Background to Requirements for Importation of Used EEE.
[695] Part I – General Provisions (Regulations 1 – 26); Part II – Sampling Procedures (Regulations 27 – 33); Part III – E-Waste Control (Regulations 34 - 42); Part IV – Permits (Regulations 43 – 52); Part V – Industrial Effluent/ Air Emission Monitoring and Reporting (Regulations 53 – 56); Part VI – Enforcement (Regulations 57 – 61); Part VII – Offences (Regulation 62 – 67); Part VIII – Penalty (Regulation 68), and Part IX – Miscellaneous (Regulations 69 – 70).

Electrical/Electronic Sector Regulations, a handful seizure of some sort has been made by the Nigerian Customs, even though some of the arrests werebecause the importers did not 'settle' or bribe the Customs and the regulatory authorities).

It has been reported that an importer will have no problems clearing his goods if he cooperates with the customs officers. Where the importer starts forming protocol, his goods will be confiscated.[696]This point was clarified by the words of the reporter,FisayoSoyombo, editor of 'TheCable', who disguised his appearance – first as a hungry, hapless job seeker; later as a trainee clearing agent; and finally as an intending importer of cars, computers and Italian suits and shoes – to penetrate into the importing and clearing ring at the Nigeria Customs Service (NCS):

> It is better to cooperate, because instead of paying full Custom charges to the government, you can pay just one-third to Custom officials, and your goods will be cleared. So, let's assume that your charges amount to ₦1million. You can pay ₦100,000 to government. This leaves you with a balance of ₦900,000, but you only need to bribe Customs officers with N300,000, and your goods will be cleared. This means that instead of paying N1million to the government, you will clear your goods for just ₦400,000 if you're ready to "play ball." There exists series of artificial bottlenecks devised by Customs officials to exploit the average importer.Customs may tell you that your container is on red alert and that your physical examination will not take place until another three days, because there are thousands of containers to be examined.You will need to pay Customs to come and open your container and examine; they have somehow legitimized this corruption. In my own case, the total payment was ₦60,000, while we paid ₦24,000 for the physical examination itself. Meanwhile, shipping lines do not charge you day by day; they charge you upfront, minimum of four days.Now, when it's time for your container to be opened, the Customs officers will tell you to open, even though they know that you actually cannot open the container yourself. Therefore, you are forced to engage the services of their labourers. But before the labourers lift a finger, they demand money – and you have to pay them. Meanwhile, this was one of the things you already paid Customs for.

The principal thrust of these Regulations is to prevent and minimise pollution from all importation and operations and ancillary activities of Electrical/ Electronic

[696] Premium Times of Wednesday, November 2, 2016 The Civil Society Network Against Corruption (CSNAC) demands probe of Nigeria Customs accessed 2/11/2016 from: http://www.premiumtimesng.com/news/more-news/214046-csnac-demands-probe-nigeria-customs.html. See also, Undercover Investigation: Nigeria's 'Customs of corruption, bribery and forgery' accessed 2/11/16 from: https://www.thecable.ng/undercover-investigation-nigerias-customs-of-corruption-bribery-and-forgery It was also reported by the Nation of November 18, 2014, that the Management of the Nigeria Customs Service (NCS) approved the dismissal of 52 officers for corruption, warning importers and clearing agents still handling non-compliant cargoes to key into the Pre-Arrival Assessment Report (PAAR) programme of the Federal Government or face its wrath. More recently, the Nigeria Customs Service (NCS) has dismissed 17 junior officers for drug addiction, certificate forgery, theft and absenteeism. See The Nation of Monday October 17, 2016, p. 5.

Sector to the Nigerian environment. The Regulations cover both newelectrical/ electronic equipment (EEE) and used electrical/ electronic equipment (UEEE).[697] Strictly, before importation of new EEE, it must have date of manufacture inscribed on it and warranty indicated.[698] For new products assembled in Nigeria, they must have serial numbers inscribed on them.[699] Intending importers are expected to register with NESREA.[700] It is also required that all EEE manufacturing, processing, operational and power generation, transmission/ waste electronic equipment shall be subject to Environmental Audit and Report every 3 years.[701] This is in addition to the yearly requirement that by the 31st of March, every producer or importer shall furnish the Agency in writing of records of the quantity of all EEE it has imported into Nigeria in the preceding year.[702] Every person who uses any of the EEE is expected to apply best practicable environmental option, cleaner production and green technologies to reduce pollution to a minimum of the national standards.[703] Emphasis on environmental planning is also efficacious to reduce and/or eliminate pollutants at source. Thus, everybody corporate or organisation shall install anti-pollution equipment for the detoxification/treatment of effluent emission emanating from their facility so as to meet the prescribed effluent and emission standards.[704]

Furthermore, every person is expected to adopt the principle of the 5Rs[705] within two years of the coming into force of these Regulations.[706] The Polluter Pays Principle (PPP) is applicable to all who pollute.[707] In the telecommunication industry, companies deploying electromagnetic fields in their operations shall employ best practices as

[697]Regulation 2(1).
[698]Regulation 3(1). The problem with the warranty on products being imported into Nigeria is that the poor electric power situation in the country which leads to fluctuations and use of generators virtually erodes the substance of the applicability of the warranty.
[699]Regulation 3(2).
[700]Regulation 3(3).
[701]Regulation 4.
[702]Regulation 40.
[703]Regulation 4(2); and 8.
[704]Regulation 6(1).
[705] Reduce, Repair, Re-use, Recycle, and Recover.
[706]Regulation 4(7).
[707]Regulation 7.

stipulated in the National Environmental (Standards for Telecommunications/Broadcasting Facilities) Regulations, 2011.[708] Similarly, discarding or throwing of e-waste[709] is strictly prohibited, except at designated collection centres. Manufacturers and importers of EEE shall partner with NESREA to ensure environmentally sound management of e-waste control, handling and collection.[710]Individuals are in addition to their embracing sound environmental care on daily basis, obligated to report any disposal of e-waste in an undesignated location to the appropriate authority.[711]It is expected that every person handling e-waste shall ensure the use of appropriate personal protective equipment (PPE).[712]This involves extended producer responsibility whereby a partnership is established to the effect that expired or end-of life gadgets are collected and bought back by the producer for recycling by NESREA approved recyclers.

The management of oil station and fuel dumps is also regulated. This is aimed at tackling environmental contamination arising from leakage of oil or chemical storage tanks.[713] The regulation of effluent is also given attention. This is done by setting, allowable effluent limit,[714] restriction on the release of toxic effluent,[715] treatment of effluent,[716] sludge disposal.[717] Accordingly, only those with the requisite permit(s) can discharge sludge. Strictly, permits under the Regulations are not transferable[718] examples of which include: EEE import permit; EEE export permit; E-waste collection centre

[708]Regulation 9.
[709] I.e. used electrical/ electronic materials/ appliances, and see Schedule 1 for the categories of EEE covered by the Regulation.
[710]Regulations 11 and 34.
[711]Regulation 38.
[712]Regulation 37.
[713]Regulation 13.
[714]Regulation 15.
[715]Regulation 16.
[716]Regulation 17.
[717]Regulation 18.
[718]Regulation 45.

permit; E-waste recycling permit; Installation/Operation permit; Industrial/Commercial discharge permit; and Sludge disposal permit.[719]

Furthermore, a person shall not export or transit e-waste without a valid trans-boundary and movement permit issued from the Federal Ministry of Environment.[720] Such applicant must also satisfy the Agency that he has subscribed to an appropriate insurance policy.[721] A permit under these Regulations becomes affective from the day of issuance and expires on 31st December of the second year. This means that the validity of a permit is two years, and thereafter renewable on two yearly basis.[722] However, a permit can be modified, revoked or terminated in the interest of the public; non-compliance with the conditions of the permit; non-disclosure of information requested by the Agency.[723]

Emission of air pollutant is also regulated to the extent that burning of fuels is prohibited if it contains over 0.5 per cent sulphur by weight.[724] This is ascertainable from laboratory test of air samples. The Regulations thus require the sampling of air, chemical and other parameters to ascertain compliance of using power generating EEE and any potential pollutants with environmental effluent standards.[725] Burning or breaking of e-waste is prohibited.[726] In order to regulate nuisance caused by noise, the use of Electrical/Electronic equipment and gadgets is subject to noise standards and control regulations.[727]

The requirements for industrial effluent monitoring and reporting are provided in regulations 52 – 55. As part of the individual effluent monitoring and reporting, a permit holder is required to record and submit his monthly effluent data sheet to the Agency.

[719]Regulation 43.
[720]Regulation 41.
[721]Regulation 42.
[722]Regulation 44.
[723]Regulations 49 and 51.
[724]Regulation 21.
[725] See: Regulation 27; 28; 29; 30; 31, and 32.
[726]Regulation 36.
[727] Regulations 23 – 26.

The report shall be based on sampling analysis in the period covered by the report.[728] The monitoring records shall be retained by NESREA for at least 10 years and throughout the course of any litigation.[729]

Penalty for contravention of the regulations is provided by regulation 67(1)-(3). An individual convicted of importing end-of-life or unusable or unserviceable EEE shall be liable to a fine not exceeding ₦500.000.oo or imprisonment for a term not exceeding two years or to both such fine and imprisonment. Conviction for all other offences attracts fine not exceeding ₦200,000.oo and an additional ₦5,000.oo for every day the offence subsists. Where the offence is committed by a corporate body, it shall be liable on conviction to a fine not exceeding ₦1,000,000.oo and an additional ₦50,000.oo for everyday the offence subsists.

While appreciating the effort of the Agency in making these Regulations that place serious checks on importation, distribution and use of electrical/electronic equipment; it is however recommended to be improved upon. For example, it is doubtful, whether an offender would easily report and submit himself for punishment, in the event of contravening the regulations. This is against the natural cause of events. Thus, compliance with the provisions of regulation 52(7) to the effect that permit holder shall report himself to the Agency on commission of serious violation in any month may be very difficult. Similarly, what constitutes serious violation also seems illusory. Similarly, there is need to amend regulation 56 provision that an enforcement notice shall be served, if the Agency is of the 'opinion' that an operator has contravened, is contravening or is likely to contravene any condition of a permit. It is still reasoned that the opinion of the Agency may be politically driven against an opponent of the appointer of the Agency's officials. Thus what constitutes the opinion of the Agency should be defined, described or delimited in clear unambiguous terms.

[728] Reg. 52(1)-(6).
[729] Reg.54.

The attempt of NESREA to partner with the private sector in collecting e-waste for recycling is an important aspect of these Regulations which is highly commendable.[730] Where NESREA requires probity is on regulating permits;[731] and to hold any operators responsible for excess effluent discharge generally,[732] and consequently revoke licenses of inefficient e-waste managers.[733] In revoking a licence, public interest must be given paramount consideration.

Commendably, failure to comply with abatement measures and contravention of the permit condition are offences enforceable against any permit holder.[734] Particularly, the provision of regulation 60(4) empowers the Agency to enter and seal any facility contravening the regulation. This power must however be exercised with caution to safeguard public interest and the principle of fair hearing.

4.2.10 **Soil Erosion and Flood Control Regulations, 2011**[735]

The main objectives of these Regulations are to protect human life, the environment and minimize losses due to flood and erosion.[736] Organised into five parts;[737] these has a total of 21 provisions and *inter alia* provide for:

(a) Sustainable protection and enhancement of the ecosystem and flood plains, as well as vulnerable water of Nigeria from significant adverse effects of environmental degradation.[738]

(b) Taking of inventory of erosion and flood collection systems of towns and cities in Nigeria, such as: catchment basins, manholes (sewer opening or drain tank), pipes,

[730]Regulation 39.
[731]Regulation 52.
[732]Regulation 43.
[733]Regulation 49 and 50.
[734] Regulation 62 – 64.
[735] Official Gazette No. 39, Vol. 98, S.I. No. 12, Govt. Notice No. 125, pages B371 – 398. It costs ₦1,500.oo.
[736]Reg. 2.
[737] Part I- General provisions; Part II- Erosion Control Regulations; Part III- Flood Control Regulations; Part IV- Offences and Penalties, and Part V- Interpretation.
[738]Reg. 3.

culverts, bridges, ditches, streams, rivers, ponds, dams, etc.[739] The Agency collaborates with State and Local Government authorities and their relevant ministries and departments to carry out the inventory taking.

(c) Regulation of earth-disturbing activities such as: grading, sand dredging, blocking of water channels, bush burning, deforestation, excavating or filling of vulnerable sites.[740]

Strictly, certain activities are exempted by the Regulations, namely: livestock grazing; crop cultivation, tree planting, areas covered with a permit, carrying out a project requiring an environmental impact assessment, family residence, and where the topography and existing vegetation can prevent erosion.[741]

Stipulating for erosion control, regulation 10 provides that proponents of earth-disturbing activities[742] shall prepare Erosion Control Plan in tandem with extant Guidelines and Standards on soil erosion before they can be given approval by the Agency. The Control Plan shall be certified by a licensed engineer registered with the Council for the Regulation of Engineering in Nigeria (COREN) or Council of Mining Engineers and Geologists (COMEG) as the case may be.[743]

Installation of erosion and sediment perimeter controls stipulated under Schedule III to the Regulations shall be the first action of construction prior to any earth moving or disturbing activity.[744] Similarly, all infrastructural development shall incorporate appropriate flood control measures, such as: surface and sub-surface drainage facilities, dams, flood walls, high flow diversions and planting of trees, shrubs and grasses.[745]

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[739]Reg. 6.
[740]Reg. 9.
[741]Reg. 8.
[742]Although the meaning of land-disturbing activities is not proffered by the Regulation, it is understood to mean dumping, digging or burrowing of the soil for whatever purposes without considering its degrading impacts. This understanding is aptly captured by the definition of earth-disturbing activities by the Regulation. Accordingly, earth-disturbing activities mean grading, excavating, filling or other alteration of the earth's surface where natural or man-made ground cover is destroyed and which may result in, or contribute to erosion and sediment pollution. See Reg. 20.
[743] See also Schedules I and II.
[744]Reg. 11.
[745]Reg. 14.

To control flood, specific permits which must be obtained from relevant authorities include: building permit, site plan approval, and zoning permit before embarking on any construction within a flood vulnerable area. An application for a permit must indicate that any proposed building sites will be reasonably safe from flood and erosion.[746] The applicant shall ensure that affected communities and relevant agencies are notified prior to any alteration or relocation of a watercourse including obtaining the necessary permits at Federal and State levels namely: stream channel encroachment line permit, water diversion permit, dam safety permit, etc.[747]

Inspection and enforcement actions[748] are carried out by the Agency to determine compliance with the regulations. Consequently, the Agency may request for on-site modification of flood control measures, and where found culpable after the requisite notices, the violator shall be liable to a fine prescribed in section 26(3)(4) of the NESREA Act, 2007.[749]

By regulation 19, any human person who violates the provisions of the Regulations shall be liable on conviction to a fine of at least ₦1,000,000.oo or to imprisonment for a term not exceeding 2 years and an additional fine of ₦10,000.oo for every day the offence subsists. On the other hand, a company convicted for an offence under the Regulations shall be liable to ₦5,000,000.oo and an additional fine of ₦50,000.oo for every day the offence subsists.

It would appear that the Regulations are yet to achieve any measureable success. This is because of the failure of governments or regulatory authorities at all levels to do what they are supposed to do. For example, the failure of government to enforce extant laws for development (building or construction) projects makes many people in the rural

[746]Reg. 15.
[747]Reg. 14(6) (7).
[748]Reg. 18.
[749] That is, a fine not exceeding ₦200,000.oo or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of ₦10,000.oo for every day the offence subsists. Where the offence is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding ₦1,000,000.oo and an additional fine of ₦50,000.oo for every day the offence subsists.

areas to develop housing without any regard to flood or erosion control. It is usually after some years when the adverse effects become imminent that government starts shouting and demolishing people's building for non-compliance with extant laws. It is opined that the government and all relevant authorities must be proactive and circumspect in ensuring compliance with these Regulations; and must not wait until the adverse effects of erosion and flooding results before taking steps. To help NESREA achieve the objectives of these Regulations, States and Local governments must enforce regional and urban planning laws in relation to erosion control practices. Building or site development permit should be issued based on compliance with preliminary requirement of installing erosion control measures.

In respect of erosion control, it is interesting that the Regulations impose liability for damage on any person or property as follows: 'compliance with the provisions of these Regulations shall not absolve any person from liability for damage to any person or property otherwise imposed by law'.[750] However, with respect to flood control permits, the Agency exonerates itself, its agents/employees or any approving body from liability occasioned as a result of reliance on the Regulations or any of its administrative decisions. This way of making regulations we submit is anti-people. It shows that the Agency or its agents can issue flood permits arbitrarily without thorough consideration of feasibility study of the area. This is so, since the Agency cannot be held liable for any damage resulting from operation of its permit. We therefore submit that there is need to expunge regulation 17 which in effect absolves the Agency or any approving authorities from liability occasioned by the improper issuance of any erosion and flood control permit.

Also, it is not sufficient for the Agency to issue permit based only on an erosion control plan certified by a registered engineer. This is because of the incidents of corruption where many professionals do anything just to get paid. For example, it is now

[750]Reg.12.

of public knowledge that many construction projects awarded by the Federal Government are carried out without any quality control. Commenting on the lapses regarding the construction of the Bodo/Bonny road in Rivers State, one of Nigeria's former Presidents said the contract didnot hold because it was almost like the story of the East-West Road that was awarded without proper design which got stuck with time. He however assured that the government would go back to proper procurement, proper design, proper cost, etc.[751]Similarly, most executed projects are sub-standard and can hardly stand the test of time; for which reason some Niger Delta Youths are now urging Buhari to probe the Niger Delta Development Commission among others over billions of naira paid to contractors for projects not executed or abandoned.[752] Also, many unlicensed pupil surveyors send survey plans to registered surveyors for their stamp/seal for a fee. Consequently the Agency ought to set up its own qualified team which must be honest to study and carry out its assessment of the area for which the permit is sought. Thus, the government should aid the Agency in this regard to do qualitative flood/erosion control plan; in order to compare it with the one submitted by an applicant. This step would better serve the public interest and guarantee the integrity of the plan, as well as the permit to be issued.

It is our view that regulation 8 which exempts livestock grazing for the purpose of soil erosion and flood control is not good enough. We submit that being a private business, livestock grazing should be regulated. This is because many places used for grazing if not replanted tend to cause soil erosion and flooding. Thus, livestock owners should acquire rangelands where their livestock shall be confined and restricted. This would no doubt, tackle the challenge of insecurity posed against Nigeria by the Fulani

[751]Address of Dr. Goodluck Jonathan to theKing of Bonny Kingdom, His Royal Majesty (HRM) King Edward Asimini William DappaPepple XIII and his delegation at the Presidential Villa prior to the 2011 general elections accessed November 10, 2016 from http://thenationonlineng.net/hope-bodobonny-road-12-years/

[752]The Nation Friday, November 4, 2016, p. 4. See also Senate probes ₦2.4b abandoned NDDC projects in the Nation,November 26, 2015.

men who carry assorted guns and other weapons of destruction to maim and kill land/farm owners on whose lands they graze their cattle unabated.

4.2.11 **Standards for Telecommunications and Broadcasting Facilities Regulations, 2011**[753]

The Telecom and Broadcasting Regulation is a measure introduced by NESREA to regulate telecom operators. This is because even if the Telecommunication sector has contributed greatly to the growth of the country's economy through employment generations, easy communication, breaking barriers in businesses and facilitating trade across the nations; the activities of the sector adversely impact the environment. Operations of Telecom base stations cause smoke emission from generators, oil spillage from the diesel storage tanks, increase in noise level, non-adherence to setbacks specifications and mast integrity.

The principal thrust of the Regulations[754] is among others to; ensure consistent applications of environmental laws regulations and standards in the telecommunications and broadcasting industry in Nigeria.[755]

Organised into 14 regulations, the telecom and broadcast Regulations among others provide for the following:

(a) Environmental requirements for siting and installations of telecom/broadcast base stations, masts and towers.

(b) Environmental Impact Assessment for the base stations, masts and towers.

(c) Environmental Audit of all existing telecom/broadcast facilities on 3 yearly basis.[756]

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[753] April 29, 2011 Federal Republic of Nigeria Official Gazette 38:98, Government Notice No. 124, Lagos.
[754] The regulations have a total of 13 sections: 1-Citation; 2-Thrust; 3- Objective; 4- Scope; 5- Environmental Requirements for siting and installation; 6- Abandoned Telecommunication/ Broadcasting Base Station; 7- Environmental Monitoring and Inspection; 8- Permissible radiation; 9- Guidelines and Standards for the use of Power generators; 10- Enforcement; 11- Sanctions; 12- Disclaimer, and 13- Interpretation.
[755] Regulation 2.
[756] For (a)(b) and (c), see Reg. 5.

(d) Routine environmental monitoring and inspection of facilities to determine compliance with the Regulations.[757]

(e) Where any base stations, mast/tower has not been in operation for a period of 3 years, it shall be considered abandoned and the site must be restored to its possible natural state within 6 months of termination of operation or abandonment.[758]

(f) Permissible radiation level for base stations to ensure they do not transmit electromagnetic waves capable of causing adverse effects on people and the environment. Permissible radiation limit is as approved by World Health Organisation and International Commission on Non-Ionising Radiation Protection (ICNIRP).[759]

(g) In setting Guidelines and Standards for the use of power generators, use of solar, hydro, wind power sources is encouraged.[760]

The Guidelines also stipulate among others the following:

(i) Generating sets shall be located at least 15 meters away from any surface or domestic water source

(ii)Permissible noise level, smoke and vibration shall not be exceeded.

(iii)Power generating sets within a base station shall be noise proof; and the exhaust shall not be directed at adjacent property.

(iv)Waste oil, sludge and oil filters from generating sets shall be handled and disposed in compliance with extant laws and regulations.

In case of non-compliance of any telecom/broadcast facility, the Agency issues a notice directing compliance but only after it had inspected the facility 14 days after an initial notice of non-compliance had been served on the facility owner or operator.[761]Any

[757]Reg.7.
[758]Reg. 6.
[759]Reg. 8.
[760]Reg. 9.
[761]Reg. 10.

officer of the Agency may in course of his duty enter any premises or facility to take required samples or specimen from a telecom/broadcast facility for analysis. Any person who obstructs the Agency's officer in the performance of the foregoing duty commits an offence and shall be liable on conviction to a fine not exceeding ₦1,000,000.oo or imprisonment for one year or to both; and an additional fine of ₦50, 000.oo for everyday the offence subsists.

Furthermore, it is an offence to violate the provisions of the law on environmental impact assessment (EIA), environmental audit reporting (EAR), environmental monitoring and inspection, restoration of abandoned site, permissible radiation level and guidelines for the use of power generators. Conviction for any of the foregoing violations attracts a fine not exceeding ₦5, 000,000.oo or imprisonment for a term of 5 years or to both such fine and imprisonment and an additional fine of ₦50, 000.oo for everyday the offence subsists.

It is commendable that Nigeria now has these Regulations for the telecom/broadcast industry.[762] Undoubtedly, by the express provisions of regulation 4, the activities of telecom operators in the country are checkmated. Placing importance on safety to life and property, the Regulations provide that installation and operation of telecommunication and broadcasting base stations and masts must not constitute public nuisance.[763] Laudably, the Regulations stipulate that site specific environmental impact assessment (EIA) must be conducted prior to installation of any new base station.A telecom operator must comply with the minimum setback of 10 meters from the perimeter wall of residential/business premise, schools and hospitals to the base of the mast.

For existing sites, environmental audit for such sites must be submitted to NESREA once in three years. Furthermore the provision that installation of

[762]The fact that its main objective is to protect the environment and human health is commendable. See: Regulation 3(1).
[763]See Regulation 3(2)(a)(b) and (c).

communications masts must be in conformity with the plan of a particular area and the general plan of the host and immediate transit community is recognition of good urban and regional planning. This step is a realisation of the need to embrace good habitation. However, the problem is that many of the previously installed masts have violated this rule. For example, contrary to the stipulations of the Regulations,[764] so many masts have been installed within less than 6 meters from residential houses and classrooms. Most times too, the noise from the power generating sets is disturbing and damaging to health. To enforce compliance with these Regulations, NESREA must as a matter of urgency demand and enforce the relocation of all violating masts installations; notwithstanding any lease agreements in respect of the lands on which they are installed. Consequently, particular locations which must not be close to residential or commercial areas may be earmarked for the installation of the masts. It is submitted that unless and until the telecommunications operators are corrected with strictness, they may not stop toying with the laws and by extension the environment and lives of citizens in Nigeria.

Notably, obstructing an officer of the Agency in carrying out his duties is an offence. This provision is aimed at checkmating operators of facilities from closing their gates against inspection and sample collection by the officers of the Agency. However, a major concern is the disclaimer of liability by the Agency in regulation 12 as follows:

> These Regulations shall not create liability on the part of the Agency or any other authorised or approving body or employee thereof for any damages that may result from reliance on these Regulations or any administrative decision lawfully made thereunder.

It is viewed that the foregoing provision invariably defeats the essence of the Regulations; where the Agency is swift at collecting monies from any erring facilities, but shies away from owning up its necessary liability of the duty of care to the facility and the public. This means that the officers of the Agency can always do anything whatsoever and get away with it, even when their action occasions damage to the facility

[764]Regulation 9 (2) (3) (a) (b).

or the public. It is therefore recommended that regulation 12 be expunged. Alternatively, the regulation should create and impose liability on the Agency or any of its authorised agents, where its administrative decision or reliance on the Regulations occasions serious damages on any persons; subject however to claims and damages under the tort law of nuisance and environmental law on impact assessment.

By regulation 6, it is provided that abandoned telecommunications/broadcasting base stations, masts and towers should not be allowed to pose a threat to the environment, human health and safety. This is good. However, it is not stated whose duty it shall be to restore such abandoned sites to its natural state. There is need for an amendment to fill this lacuna. Undoubtedly, owing to this lacuna, many abandoned telecommunications sites remain unrestored to their natural states. At many locations in Nigeria, the abandoned towers, masts, cables and phone boots of the defunct Nigerian Telecommunications Company(NITEL) deface the environment.

4.3 **NOSDRA's Regulations**[765]

Oil spill incidents are some of the most challenging environmental consequences of oil exploration, production and transportation, as they impact the environment and socioeconomic livelihood of the people e.g. farmlands, aquatic life and water quality. This necessitated the development of guidelines and standards for the recovery of oil spill, clean-up and restoration of impacted sites as well as procedures for damage assessment for the purpose of compensation. In line with its mission of restoring and preserving the environment by ensuring best oil field, storage and transmission practices in exploration and production, NOSDRA in 2011 came up with crucial Regulations in response to oil spill incidents in Nigeria.

[765] As at the time of this research, the NOSDRA has made just two Regulations, namely, Oil Spill and Oily Waste Management Regulation, 2011; and Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations, 2011.

4.3.1 **Oil Spill and Oily Waste Management Regulations, 2011**

In line with section 26 of the NOSDRA Act, the application of this Regulation covers the petroleum sector with its interdependent activities of exploration, production,[766] transportation, refining and marketing of petroleum products. In other words, the Regulations are concerned with discharges of oil and oily waste from oil and gas activities.[767] Some Sources of Oil Spill and Oily Wastes identified by the Regulations include:

i. Seismic activities- from refuelling and maintenance of seismic survey trucks or vessels on land or water respectively.

ii. Exploration, production and development operations- from well blow-out, discharge of drilling mud or fluids, drill cuttings, deck drainage and well treatment fluids. Others include oily effluents and accidental oil spills, liquid or aqueous wastes from leakage at producing or abandoned well manifolds, rupture, piping or storage facilities tank overflow, corrosion, routine maintenance, third party interference, equipment malfunction.[768]

iii. Terminal operations- from oil spill leakages from pipe, hose burst, malfunction or faulty equipment, corrosion, maintenance operation, etc. Wastes from stream in terminal operations include: formation water; sludge; garbage; spent oil; grits; dirt; oily storm water run-off; refined products; oil debris; liquid wastes, and sanitary sewage.[769]

iv. Refining Operations- from fuel oil or gasoline; lube oil, and petrochemical processes. Oil spills and oily waste from fuel oil and lube refining processes include: grease, oily water effluents, storm water and solid wastes. Others are cleaning operations or water, ship's ballast, silt from drainage channels, sludge from treatment facilities or storage tanks, scraps and entrained solids in crude as sludge. From petrochemical processes, the

[766] Exploration, production and development activities include: seismic survey, drilling and well completion which may be carried out on dry land, swamp, shallow coastal waters and estuaries. See Appendix I-2 of these Regulations
[767] Appendix I -1 of this Regulation.
[768] Appendix 1 – 3.
[769] Appendix 1 – 4.

sources of oil spillage and wastes include: process water; piping leakages; storage tank failures; waste from carbon black reactor; dryer; bag filter; ash sludge; homo co-polymer reactor; extrusion, and off-spec products.[770]

v. Blending Plant: This consists of storage of base stocks in storage tanks, mixing or blending of base oil of different categories and additives to produce finished products, usually petrol or diesel engine oil, transmissions or grease oil, hydraulic oil, storage and packaging of finished products through tanks, drums, cans, and bulk loading. From these processes, generated oil spills and oily wastes include: run-off at filling points, leaks and spillages due to equipment failure or corrosion, process water, storm water and solid wastes from base oil or sludge from storage tanks, metallic, glass, plastic or paper containers, and oil or water separators.[771]

vi. Oil and Gas transportation- from tank failures, pipeline corrosion due to age of equipment, loose joints, run-off from storage or loading area, leakages from loading arms, bays, generator houses, and pumps. The common wastes generated through this process include crude oil, petroleum products, lube oil, oily liquid effluents, solid waste and contaminated soil/sand.[772]

vii. Retail Outlets or Filling Stations- from overflow or overfilling of vehicle or boat fuel tanks, underground or above ground storage tanks, servicing of automobile engines, draining of used engine oil and washing of engine parts. Others are leakages from dispensing or offloading areas, as a result of design error, use of substandard construction materials or water at the bottom of the storage tanks.[773]

Divided into ten parts[774] and comprised of 155 regulations, the Oil Spill and Oily Waste Management Regulations, 2011 provides for the management of petroleum

[770]Appendix I – 5.
[771]Appendix I – 6.
[772]Appendix I – 7.
[773]Appendix IX – 8.
[774]**Part I**- Regulatory Setting and Scope of Application of the Regulation, comprised of Regulations 1and 2; **Part II**-Environmental Management for on-shore and off-shore Petroleum Exploration, Production and

products and its associated facilities which are capable of generating wastes on the environment. Of importance is the fact that the scope of application of the Regulations covers both on-shore and off-shore petroleum facilities in Nigeria, which due to their locations can reasonably be expected to discharge oil or oily waste in harmful quantities upon the land or navigable waters of Nigeria.[775] However, there is allowable or permissible oil or waste discharge,[776] which will likely not affect the composition or structure of the land or water.

Although, there is yet no judicial interpretation of the regulations purporting the permissible oil or waste discharge, it is opined that little drops of water make an ocean. Similarly, oil or oily waste discharge, no matter how little or insignificant is capable of being harmful or altering the land and water of Nigeria. Admittedly, the Regulation provides for allowable limits for oily waste water,[777] it does not for oil spillages on land. The provisions of the Regulations also apply to both on-shore and off-shore petroleum facilities which for convenience are classified into: up-stream, mid-stream, and down-stream subsectors[778]. Accordingly:

i. The up-stream subsector, which covers crude; oil, condensate and gas exploration and production activities, including crude oil terminals;

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development, comprised of Regulations 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19; **Part III**- Environmental Management for Production Operations, comprised of Regulations 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39; **Part IV**- Environmental Management for Terminal Operations, comprised of 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56; **Part V**- Environmental Management for Refineries and Petrochemical Plants, comprised of Regulations 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74; **Part VI**- Environmental Management for Blending Plants, comprised of Regulations 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, and 93; **Part VII**- Environmental Management for Oil and Gas Transportation, comprised of Regulations 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113; **Part VIII**- Environmental Management for Oil and Gas Deports or Tank Farms, comprised of Regulations 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, and 132; **Part IX**- Environmental Management for Retail and Associated Facilities, comprised of Regulations 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, and 151; and **Part X**- Miscellaneous Provisions, comprised of Regulations 152, 153, 154, and 155.

[775]Regulation 2.

[776] See Regulations, 30, 31, 50, 67, 84, and 144.

[777]Regulation 31and Appendix III-4 to the Regulations.

[778]Regulation 1.

ii. The mid-stream subsector consists of crude oil pipeline transportation, storage, refining and petrochemical production, liquefied natural gas, and gas conversion, including all processing facilities; and

iii. The down-stream subsector entails petroleum products and natural gas distribution to final consumers involving marketing operations, jetties, Above Ground Storage tanks (ASTs), retail outlets products pipelines and Underground Storage Tanks (USTs) operations.

The above provisions, it is submitted, have diversified and further compounded the areas of conflicts between NOSDRA and DPR. It is therefore opined that for NOSDRA to be more focused, effective, and efficient, it should be concerned with 'crude oil' spills, while DPR should concentrate on refined petroleum products. Thus, the question is: if NOSDRA becomes preoccupied with spills arising from petroleum products distribution, up to the final consumers, what would be left of the DPR's roles? Note that for long, the DPR has been in the work of monitoring and regulating distribution of petroleum products from the upstream to the downstream sectors. It is therefore submitted that Regulation 1(i) and (iii) need to be reviewed with a view to streamline or redefine the roles of NOSDRA and DPR in order to avoid or avert further or future conflicts in areas of their operations.

It is germane to indicate that the Regulations prescribe uniform best environmental management practices for the prevention, control, and monitoring of oil spills and oily waste discharges from petroleum exploration and development activities.[779] This Regulation is important because it considers the efficacy of opting for preventive measures. It is opined that oil spill occurrences will likely reduce if the Agency shall ensure strict compliance monitoring which promotes the ideals of preventive measures.

[779]Regulation 3(2).

No doubt, if oil spills are prevented from occurring, the purpose of environmental impacts assessment and protection of the environment would have been realised in this area. This is particularly so as there is no amount of punitive penalty payable by a polluter facility owner that can sufficiently compensate for the polluted water or land which cannot be returned to its hitherto healthy natural state. The best that can be done is a remedial clean-up which only certifies an allowable recovery level at which point the environment is closed out to finish its recovery process naturally. This usually takes a long period of time culminating into various years.

By Regulation 4, owners or operators of facilities which due to their locations have the possibility to discharge oil or generate oily wastes shall prepare in writing a Spill Prevention Control and Counter Measures Plan (SPCCP) and an Oil Spill Contingency Plan (OSCP). These measures are subject on submission, to the approval of the NOSDRA.[780] Furthermore, these measures are subject to amendment in consonance with the change in design of any facility, construction, and maintenance[781]. There are usually required or approved standards for SPCCP by NOSDRA.[782]

All facilities with potentials to cause oil spills and discharge oily wastes shall have any of the following appropriate containment plan or structure constructed to prevent oil flowing into adjacent land or navigable water-course: bund-wall, spill diversion and retention ponds, booms and other barriers, absorbent materials, drip pans, sumps and collection systems. All storage tanks shall be installed with any of the followings to check spillage, leaks or material defects: high liquid level alarm; cut-off devices; coded signal between tank gauge and pumping station; digital computers, and direct vision gauges; and liquid level sensing devices.

[780]Regulations 5; 23; 43; 60; 77; 96; 116; and 135.
[781]Regulations 6; 24; 34; 44; 61; 78; 98; 118; and 137.
[782]Appendix II-1(B) to the Regulations.

All these shall be regularly monitored against defects to prevent oil spills; as owners or operators of facility transfer, pumping and in-plant processes shall ensure the following oil spill, leak or pollution preventive measures:

i. Cathodic protection, coating and protective wrapping of all pipe installations.
ii. Routine inspection of surface pipe installations, control valves, pumps, bolts, strength of materials against corrosion or deterioration.
iii. Pipe support must pass the ASTM[783] and API[784] material tests to ensure minimum abrasion and corrosion, including allowance for expansion and contraction.
iv. Pressure testing for installed pipes.
v. Automobiles must have the minimum entry permit to oil facility area and shall obey strictly 'no entry' or 'restriction prohibited' signs.

Apart from submitting the written plan of SPCCP and OSCP to NOSDRA, owners or operators of facilities are required to make provisions to prepare for, put in place appropriate measures to respond and prevent the occurrence of oil spills or oily wastes discharges in their areas of operations.[785] To enhance prevention measures, owners or operators of facilities with potentials of oil spill or oily waste discharge shall regularly carry out oil spill equipment audit.[786] In tandem with the NOSDRA Act,[787] the Regulations further reiterate that an owner or operator of a facility shall within 24 hours report to the Agency any discharge of oil or oily waste upon land or navigable water of Nigeria.[788]

After the notification of any spillage to the Agency within 24 hours, a Joint Investigation Team (JIT) is constituted. The Team which is comprised of the Facility operator, representatives of the affected community, the State Government and the

[783]American Society for Testing Materials.
[784] American Petroleum Institute.
[785]Regulations 4; 7; 11; 22; 25; 42; 45; 49; 59; 62; 66; 76; 79; 83; 95; 99; 104; 115; 119; 123; 134; 138 and 143.
[786]Regulations 18; 38; 55; 73; 90; 110; 130 and 149.
[787]S.6 (2) NOSDRA Act, 2006.
[788]Regulations 8; 26; 46; 63; 80; 101; 120; 139.

Agency visits the location of the spill and investigates the cause and extent of the spillage.[789] It is opined that since the facility operators are likely to fail most of the times to report spill occurrences within 24 hours, the establishment of a functional patrol or surveillance team by the Agency is imperative. This Surveillance Team will serve as the Police of the Agency who shall be fully armed in case of combat or face-off with aggressive illegal oil bunkerers. Without a stand-by monitoring squad, it is unlikely that the Agency will achieve its goal of ascertaining promptitude in reporting spills within 24 hours of its occurrence or enhancing prevention of major spills.

4.3.2 **Containment, Recovery and Clean-up of Polluted Sites**[790]

Facility owner or operators shall act swiftly to check oil spread or oily waste discharge by deploying equipment and materials such as booms, skimmers, absorbents, saver vessels, aircrafts, dispersants, pumps, hoses, fenders and signal lamps. Oil spill or oily waste in inland waters and wetland shall be contained through mechanical or manual recovery, including gentle flushing, ditch excavation, storage in leak-proof containers or high density polyethylene (HDPE), and the method adopted must be documented and submitted to the Agency. The Regulation further provides protection for the containment, recovery or clean-up process as any obstruction by any individual attracts penalty of not less than ₦500, 000.[791]

For containment and clean-up, the procedures to be adopted depend on the sensitivity of the area or location of the spill. Effective communication and network linking all facilities with internal alerting procedure must be put in place by every facility owner or operator.

[789]Regulations 9; 27; 47; 64; 81; 102; 121and 140.
[790]Appendix II – 5.
[791]Regulation 1.11 of Appendix II – 5.

For effective remediation of impacted sites, owners or operators of petroleum facilities are expected to have a stockpile of spill response equipment and materials,[792] including: dedicated transport facilities; earth moving equipment; NOSDRA approved chemical dispersant; specialized vessels; aircrafts or helicopters; communication and auxiliary equipment; lightening equipment, and anemometer.

Strictly, the disposal plan must be in the manner approved by the Agency. For example, the Regulation provides that the owners or operators of spiller facilities shall dispose of unwanted recovered oil by incineration controlled burning in lined pits, land farming and sanitary land-filling.[793] Before a facility owner can engage in land excavation for disposal activities, it shall provide the Agency with the following information:

a. Methods to be adopted to prevent leaching, contamination of ground and surface water resources.
b. Site characteristics, type of soil and capability to handle the oil to be disposed.
c. Ground water level and direction to ensure that ground water shall not be easily contaminated.

By Regulation 10, clean-up methods are to be approved by NOSDRA, Accordingly, spilled oil or oily waste shall be cleaned-up by the owner or operator of the facility using the best practicable technology currently available. With due regard to the draftspersons, and despite the inclusion of the requirement of approval of the Agency of the technology to be used, this provision is fraught with ambiguity. The phrase, 'best practicable technology currently available' is capable of generating conflicts of the particular technology to adopt in a clean-up operation. Instead, it should have provided the particular remediation or clean-up method to adopt for the present time. For example, bio-remediation is preferable because it is not chemically harmful and does not alter the

[792]Appendix III – 2.
[793]Regulation 1.1 of Appendix III – 4.

soil structure or composition. Where the stipulated method becomes out-dated, a proviso[794] could take care of it by providing that the Agency may from time to time; amend the provisions of the Regulation by notice in the official Gazette.

Also the idea of placing the removal or clean-up exercise of the oil spill or oily waste strictly on the facility owner or operator (emphasis is mine) is not in the best interest of Nigerians and their environment. Conversely, the regulation should have adopted the full scale operation of the polluter pays principle. The purport of the principle is that the polluter should bear the responsibility or cost of cleaning spilled sites. This means that the Agency could embark on the clean-up process or contract it out to viably qualified entities and consequently demand that the spiller, owner or operator of the facility pays the financial costs. Relatively, this appears to have been taken care of by the provisions that the contractor shall be accredited by the Agency.[795] This no doubt will not be favourable to the spillers as they are likely to incur more costs, as against using most economically favourable option available even though it is not in the absolute interest of resuscitating the environment from the adverse impacts of the spill. It is submitted that until the polluter pays principle is enforced strictly to the letter, oil spillers will continue to treat with levity and impunity the regulatory laws against environmental degradation. This suggestion appears to have been taken care of by Regulation 16 which stipulates liability of owners or operators of facilities for oil or oily waste discharges. It provides:

> Owners or operators of production facilities from which oil or oily wastes are discharged into or upon land or navigable waters of Nigeria are liable for specific damages resulting from discharged oil and the removal costs incurred in a manner consistent with the National Oil Spill Contingency Plan.[796]

It is also noteworthy that where the oil spill facility owner or operator is involved in the clean-up exercise, it must be in accordance with specification prescribed by the Agency.[797] We add that the process of accreditation should not be based on favouritism.

[794]Regulation 152.
[795]Regulations 10; 28; 48; 65; 82; 103; 122; 141.
[796] See further Regulations 36; 53; 71; 87; 108; 128 and 147.
[797]Regulations 10; 13; 28; 31; 48; 51; 65; 68; 82; 85; 103; 105; 122; 125; 141 and 145.

Otherwise, the best result of remediation will not be achieved. It is further recommended that all the provisions dealing with safety of workers and inspection team should not be left at the dictates of the spiller, facility owner or operator, as is the case with the Regulation provisions.[798] Instead the facility owner or operator should be made to bear the costs of providing adequate security to ensure the safety of the inspection team. This opinion will in no mean way checkmate or deter the excesses of nonchalant oil spillers to strive tenaciously to prevent spill occurrences.

4.3.3 **Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations, 2011**

Arranged into four parts, comprised of 56 regulations,[799] these Regulations have the objective of establishing procedures, methods for detection, response, assessment of damages, clean-up and remediation of oil spills from on-shore and off-shore petroleum facilities engaged in exploration, production, storing, processing, refining and distribution of oil products capable of polluting the environment.

To detect oil spill, the owner or operator of on-shore or off-shore facility shall provide monitoring system or equipment for oil spill detection and shall carry out rapid assessment to evaluate the severity of spill incidents by aerial and visual surveillance.[800] Oil spill incidents must be reported to the Agency by the facility owner or operator within 24 hours of the spill,[801] following which a Joint Investigation Team is usually constituted for a Joint Investigation Visit to the *locus in quo* of the spill.[802] Clean-up of oil or oily wastes are carried out on shorelines,[803] sand beaches,[804] rocky shores,[805] salt marsh and

[798]Regulations 91; 111; 131 and 150.
[799]**Part I- Objective and Scope of Application** comprised of REGULATION1; **Part II- Operational Procedures for Spill Response**, comprised of SRegulation 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17; **Part III- Containment and Recovery**, comprised of SRegulation 18, 19, 20, 21, 22, 23, 24, 25, 26, 27; **Part IV- Oil and Oily Waste Minimisation and Management**, comprised of SRegulation 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56.
[800]Regulation 2.
[801]Regulation 4.
[802]Regulation 5.
[803]Regulation 9.
[804]Regulation 11.
[805]Regulation 12.

mangrove,[806] inland[807] or wetlands generally. Clean-up is usually done to avoid oil weathering and mixing with buried sediments. Thus, in the event of a spill, the operator shall swiftly:

a) Contain the spill, with suitable barrier

b) Use approved dispersant to break up the oil and speed its natural biodegradation

c) Apply biological agents to the spill, to hasten biodegradation[808]

It is recommended to use well organised teams of manual labourers assisted by from- end loaders and other mechanical equipment to transport recovered wastes. Manual recovery of oil spills by using vacuum units or other skimmers on pooled oil is also recommended.Apart from manual clean-up and recovery methods, bioremediation is also environment friendly. It is adopted for the breakdown of final traces of oil after clean-up by other methods and the addition of nitrogen and phosphorus which aid rapid microbial growth[809]. These microbes feed on the oil and consequently restore the environment. Biodegradation or bioremediation could be clean-up by bio-stimulation[810] to enhance the degradation rate by indigenous microbial community or by bio-augmentation, where natural microbes for oil degradation are not abundant.[811]

Note that for remediation of any impacted sites, the owner or operator of the facility must obtain approval from the Agency.[812] Other requirements for remediation include reports or information such as: site identification;[813] site evaluation/ type of impact;[814] type of land use- to determine the extent of human and ecological exposure to the pollutant;[815] measurement of the site;[816] topography of the area;[817] soil cover and type

[806]Regulation 13.
[807]Regulation 14.
[808]Regulation6.
[809]Regulation 16.
[810]Regulation 14.
[811]Regulation 15.
[812]Regulation 31.
[813]Regulation 32.
[814]Regulations33 and34.
[815]Regulation 35.
[816]Regulation 36.

i.e. whether cropped, fallow, pasture and amount of plant growth;[818] and whether the sand is silt, sand or clay; soil sampling;[819] percentage or aggregation of the soil quality;[820] biological activity;[821] clay content of soil;[822] feel test;[823] depth of top soil;[824] ground water plume characterisation,[825] and selection of remediation option.[826] The remediation process shall be recorded accurately by the owner or operator of the facility.[827]

After remediation option has been selected, the site owner or operator shall choose its staff or contractors to carry out the remediation work based on obtained permits from the agency. Permits requirements[828] include: a) Remediation work plan approval, b) Health and safety plan, c) Accreditation of contractors. On completion of remediation, a final remediation report containing variations from remediation work plan, excavated materials and effectiveness of the method used shall be submitted to the Agency.[829]

For containment and recovery of spills the first line response shall be isolated and containment with a suitable barrier put on the part of spreading oil. This will stop the spread and prevent pollution escalation.[830] The recommended equipment for the recovery include: booms, skimmers, absorbents, dikes, bunds, ridges and storage facilities.[831]

Strictly, dispersants shall not be used in in-land areas. However, where it is used off-shore, it is restricted to a distance of not less than ten nautical miles away from shoreline.[832] The Agency monitors the application and effectiveness of chemical

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[817]Regulation 37.
[818]Regulation 38.
[819]Regulation 39.
[820]Regulation 41.
[821]Regulation 42.
[822]Regulation 43.
[823]Regulation 44.
[824]Regulation 45.
[825]Regulation 46.
[826]Regulation 48.
[827]Regulation 47.
[828]Regulation 49.
[829]Regulation 52.
[830]Regulation 18.
[831]Regulation 19.
[832]Regulation 23.

dispersants[833] and also undertakes damage assessment after completion of clean-up by the facility owner. In the assessment, consideration is had on the extent of damage to the environment including biodiversity, water resources, fishery and fishery resources, properties and socio economic losses.[834]

Except for spills caused by third party interference or sabotage, compensation is paid by the facility owner or operator to an oil spill victim for damage caused to his person, business or property.[835] Basis for compensation includes: damage done to building, economic trees or crops as a result of surveys, seismic activities or laying of pipes for supply or distribution of energy and fuel.[836]

4.4 **Common Nexus in the Regulations Considered**:

Arguably, most of the regulations considered relate to the tort of nuisance, negligence and loosely the principle of strict liability as established by the rule in *Rylands v Fletcher*.[837]Whereas, negligence requires proof of breach of a legal duty of care which results in damages undesired by the defendant to the claimant; proof of nuisance dispenses with the requirement of proof of duty care, but the claimant must show that the activities of the defendant interfered with his property rights.[838]By the rule in *Rylands v Fletcher*, it is now settled that a person who allows escape of dangerous substance from a place in his occupation or control to another place outside his occupation and control would be liable in damages to a claimant affected thereby. Notably, to establish liability under the said rule does require that the defendant must be negligent. In other words, notwithstanding that escape of the dangerous substance did not occur as a result of negligence of the occupier in control of the place, strict liability still exists under the rule

[833]Regulation 24.
[834]Regulation 25.
[835]Regulation 26.
[836]Regulation 27.
[837][1866] L.R. 1 EX. 265; [1868] LR.3.H.L. 330.
[838]T Osipitan, Problems of Proof in Environmental Litigation, in JA Omotola (ed) *Environmental Laws in Nigeria, including Compensation* (Lagos: Faculty of Law University of Lagos Press, 1990) p. 115.

in *Rylands v Fletcher*. The exceptions however include: Act of God; act or default of the plaintiff; consent of the plaintiff; *Novus actusinterveniens*, and statutory authority.

The above exceptions or defences, recognised by the Supreme Court in*Umudje v Shell-BP Pet. Dev. Co. Ltd*,[839]have aided many oil spillers to escape liability of paying compensation to the oil spill victims. Even section 11(5)(c) of the Oil Pipelines Act which provides for strict liability of an oil spiller to pay compensation to oil spill victims, also providesan exception to the effect that compensation will not be paid where the spill was caused by the victim's default or on account of the malicious act of a third party. Thus, in *Mardraj v Texaco Trinidad Inc*,[840]it was held that a company was not liable for an escape of oil and consequent damage to the crops of neighbouring landowners which was caused by unknown trespasser's deliberately drilling a hole in the company's oil pipeline. The defence of act of stranger or third party, synonymous with sabotage is an offence.[841]Under the Petroleum Products and Distribution (Anti-Sabotage) Act, conviction for the offence of sabotage resulting in environmental pollution is punishable with a death sentence or an imprisonment term not exceeding 21 years.[842]

From the foregoing, it is clear that, for spills caused by third party interference or sabotage, no compensation is paid by the facility owner or operator for any damage to victims.[843] This point was upheld in *Friday Alfred Akpan v Royal Dutch Shell Plc& SPDC Nig. Ltd*[844] where the Court in an action for compensation for damages to fishponds, stream, farmland and economic trees, held that the defence of act of sabotage availed the defendant company, and not poor maintenance of its facilities, as had was

[839](1975) 5 UILR (Pt.I) 115, at 123.
[840](1969) 15 WIR 251.
[841]JF Fekumo, Civil Liability for Damages Caused by Oil Pollution in JA Omotola (ed) *Environmental Laws in Nigeria, including Compensation* (Lagos: Faculty of Law University of Lagos Press, 1990) p. 283.
[842]Cap. P12, LFN 2004.
[843]Regulation 26, Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations, 2011 made pursuant to the NOSDRA Act, 2006.
[844] C/09/337050 / HA ZA 09-1580 District Court of The Hague Judgment delivered on 30th January 2013. <https://milieudefensie.nl/publicaties/bezwaren-uitspraken/judgment-exhibition-alfred-akpan> accessed 29 October, 2016.

argued by the Nigerians.[845]Flowing from the decision in *Umudje's* case, it is well settled that a single act of a defendant may give rise to liability under both heads of tort: negligence and the rule in *Rylands v Fletcher*. Accordingly, it is viewed that since many of the oil spill or environmental degradation matters succeeded on ground of negligence and strict liability (except on grounds of lack of jurisdiction) actions instituted to enforce the NESREA regulations may well succeed if also argued under the tort of negligence (duty of care), nuisance and statutory strict liability.

CHAPTER FIVE:

A COMPARATIVE STUDY OF KEY LAWS ON ENVIRONMENTAL IMPACTS AND INSTITUTIONS IN SELECTED FOREIGN JURISDICTIONS[846]

5.1 The USA: Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA), 1980 (SUPERFUND)[847]

TheSuperFund Act provides for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and the cleanup of

[845]Although the Dutch court held that Royal Dutch Shell can be held partially responsible for pollution in the Niger Delta in southern Nigeria, as the company could have prevented sabotage at one of its facilities and consequently ordered it to pay unspecified damages to only one of the farmers.

[846]The website http://eialaws.elaw.org is acknowledged for its analysis of the EIA laws of many countries.

[847] The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601–9675), commonly known as ''Superfund,'' consists of Public Law 96–510 (Dec. 11, 1980) and the amendments made by subsequent enactments.

inactive hazardous waste disposal sites.The CERCLA established a Federal Fund called Superfund, which it uses to clean up polluted sites caused either by accidents, spills[848] or release of any other pollutant or hazardous wastes. Although the CERCLA was primarily enacted in response to clean up dump sites that had degenerated into hazardous wastes over time, the operation of the fund covered mop up of pollution caused by oil spillages. It is important to note that the lead legal framework for environmental protection in the United States of America is the National Environmental Policy Act, 1969.

The CERCLA also established within the Public Health Service an agency, known as the Agency for Toxic Substances and Disease Registry, which reports directly to the Surgeon General of the United States. The Administrator of said Agency with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, the Administrator of the Occupational Safety and Health Administration, the Administrator of the Social Security Administration, the Secretary of Transportation, and appropriate State and local health officials, effectuates and implements the health related authorities of this Act.

Administrator of the Environmental Protection Agency after consultation with the Attorney-General, establishes and publishes guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by the CERCLA. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and

[848] Spills here include oil spills, chemical spills, contaminated water spills, and any other form of spills.

permits, the gathering of information, and other imminent hazard and emergency powers.[849]

Strictly, by the express provisions of the CERCLA, the US- EPA (Environmental Protection Agency) is empowered to fish out the parties responsible for any pollution of the US environment, in all the 50 federating states of the US and their territories. However, the monitoring and response activities in the states are coordinated through each state's environmental protection agency. Sequel to this, such polluter is held accountable for the clean-up or cost of cleaning such site, except where the pollution was caused by act of God, Act of War, oran act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant.[850]

Where no party is held responsible for the pollution due to problem of identification, or when the polluter has failed to act promptly in cleaning the polluted site, the EPA obtains clean up orders via consent decrees and subsequently ensures recovery of the cost from financially viable individuals and companies, for whom this polluter serves as business outfit or subsidiary respectively. Where the EPA's effort to clean up the site proves abortive the American Federal Government aids the clean-up with the CERCLA Superfund. Thereafter, the government takes court action against responsible parties (by which time, they had been unravelled) to recover close to thrice the cost of the clean-up.[851] In addition to the CERCLA, States may also make Laws similar to CERCLA, but compensation received under the State law is deemed received under the CERLCA.[852]

[849] authorized by (1) sections 311(c)(2), 1 308, 309, and504(a) of the Federal Water Pollution Control Act, (2) sections3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, (3) sections1445 and 1431 of the Safe Drinking Water Act, (4) sections113, 114, and 303 of the Clean Air Act, and (5) section 7 of theToxic Substances Control Act.
[850]CERCLA, s.107.
[851] CERCLA, *ibid*
[852]CERCLA, s. 114.

The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans.[853] With respect to settlement actions with responsible parties, the decision of the President is final and accordingly not subject to judicial review.[854] On January 1 of each year the Administrator of the Environmental Protection Agency shall submit an annual report to Congress of such Agency on the progress achieved in implementing this Act during the preceding fiscal year.[855]

Any person may commence a civil action on his own behalf— (1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this Act (including any provision of an agreement under section 120, relating to Federal facilities); or (2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency) where there is alleged a failure of the President or of such other officer to perform any act or duty under this Act. The action shall be brought in the district court for the district in which the alleged violation occurred. The district court shall have jurisdiction in actions to enforce the standard, regulation, condition, requirement, or order concerned, to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall also have jurisdiction in actions brought to order the President or other officer to perform the act or duty concerned.[856] However, pre-action notice must have been given to

[853]CERCLA, ss. 120 and 121.
[854]CERCLA, s. 122.
[855]CERCLA, s. 301.
[856]CERCLA, s. 310.

the alleged violator, namely: the President, the State in which the alleged violation occurs, and any alleged violator of the standard, condition, requirement, or order concerned. The Notice shall be given in such manner as the President shall prescribe by regulation.

Within 60 days after the selection of the site for a proposed project, the Administrator of the Environmental Protection Agency shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out. Furthermore, each demonstration project shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. Notably, the Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of the demonstration project.[857] Furthermore, each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan. A risk assessment is exempt from financial bond or insurance.[858]

5.2 **US Oil Pollution Act (OPA), 1990:**[859]

Signed into law in August 1990, the USA Oil Pollution Act was a response to public outcry following an Exxon Valdez oil spill incident. The Act- a prototype of the American National Oil and Hazardous Substances Pollution Contingency Plan[860] was enacted to enable the United States of America Federal Government to provide the money and resources necessary, to respond to oil spills. It created the national Oil Spill

[857]CERCLA, s. 311.
[858]CERCLA, ss. 404 and 405.
[859]33 U.S.C. s 2701 et seq. (1990).
[860]Similar to the Nigerian National Oil Spill Contingency Plan (NOSCP).

Liability Trust Fund, which is available to provide up to one billion dollars per spill incident. It also increased penalties for regulatory non-compliance, broadened the response and enforcement authorities of the Federal government, and preserved States' authority to establish law governing oil spill prevention and response.

Long before the enactment of the Oil Pollution Act, it is worth noting that the Environmental Protection Agency in discharging its responsibility of mop up of polluted sites generally in the US enforces the provisions of the Comprehensive Environmental Response, Compensation,and Liability Act, (CERCLA), 1980 (SuperFund). However, with its enactment in 1990, it appears the OPA specifically focuses on oil spill issues.

The Oil Pollution Act (OPA) restructured and reinforced the ability of the Environmental Protection Agency[861] to prevent and respond to accidental or disastrous oil spills.[862] The provisions of the Act are given effect via a trust fund financed by a tax on oil which is available to clean up spills when the responsible party is incapable or unwilling to do so. The OPA requires oil storage facilities and vessels to submit to the Federal government plans detailing how they will respond to large discharges. EPA has published regulations for aboveground storage facilities. The OPA also requires the development of Area Contingency Plans to prepare and plan for oil spill response on a regional scale.[863]

By section 1004, responsible parties to a spill at onshore facilities and deepwater ports are liable for up to $350 million[864] per spill; and holders of leases or permits for offshore facilities, other than deepwater ports, are liable for up to $75 million[865] per spill, plus removal costs. The Federal government has the authority to adjust, by regulation, the $350 million liability limit established for onshore facilities. Perhaps, this was why

[861] EPA is the lead federal response agency for oil spills occurring in inland waters.
[862] One of EPA's top priorities is to prevent, prepare for, and respond to oil spills that occur in and around inland waters of the United States. https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations
[863] https://www.epa.gov/laws-regulations/summary-oil-pollution-act.
[864] Equivalent to ₦113, 750, 000, 000.oo (One Hundred and Thirteen Billion, Seven Hundred and Fifty Million Naira), assuming the naira-dollar exchange rate remains at ₦325.00 per dollar as at April 12, 2017.
[865] Equivalent to ₦24, 375, 000, 0000.oo (Twenty Four Billion, Three Hundred and Seventy Five Million Naira) assuming the naira-dollar exchange rate remains at ₦325.00 per dollar

President Barack Obama did not take it lightly and kindly with British Petroleum, the spillers of the Gulf of Mexico oil spill of April, 2010.

States are allowed to impose additional liability (including unlimited liability), funding mechanisms, and requirements for removal of spill actions, fines and penalties against responsible parties.Similarly, by Section 1019, States have the authority to enforce, on the navigable waters of the State, Oil Pollution Act requirements for evidence of financial responsibility. States are also given access to Federal funds (up to $250,000 per incident) for immediate removal, mitigation, or prevention of a discharge, and may be reimbursed by the Trust fund for removal and monitoring costs incurred during oil spill response and clean-up efforts that are consistent with the National Contingency Plan.[866]

The Act also makes provisions for criminal and civil penalties. For instance, the fine for failing to notify the appropriate Federal Agency of a discharge has been increased from a maximum of $10,000 to $250,000 for an individual or $500,000 for an organization. The penalties for violations have a maximum of $250,000 and 15 years in prison.[867] Similarly, failure to notify or comply with a Federal Government removal order allows for civil penalties of up to $25,000 for each day of violation, or $1,000 per barrel of oil discharged.[868]By Section 9001(a), the Trust Fund borrowing limit is kept at $1 billion.

It is noteworthy that by the enactment of the US Oil Pollution Act, 1990; a distinct agency was created and mandated to specifically handle issues of oil spillages. However, in the event of OPA- Oil Pollution Agency not meeting up, it resorts back to the EPA, which finally recourses to the CERCLA for prompt action on the pollution. Each agency knows when it is needed or called upon to act. Thus, with the various functions of these agencies promptly defined, there is hardly any case of infringement of duties and functions.

[866]CERCLA, s. 1018 (a).
[867]CERCLA, s. 4301(a) and (c),
[868]CERCLA,s. 4301(b).

5.3 **England and Wales**: **Town and Country Planning Act, 1990; The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations, 2011 (as amended):**

In England and Wales, the applicable legal framework for the purpose of EIA includes: Town and Country Planning Act, 1990; The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations, 2011[869] (as amended in 2015)[870]; Circular 02/99: Environmental Impact Assessment Guidelines and The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations, 2017.[871] Both government and private projects require EIA. Abridged assessment of the EIA process of plans, policies and projects is applicable with regard to sustainability appraisal, habitat regulations assessment at local and regional levels.

There is no adoption of best practices in lieu of EIA. The government through the Planning Authority or Secretary of State conducts the screening to determine whether an EIA is required.[872] Criteria for screening are based on the type of project, classified into three categories. For category 1 projects, also termed Schedule 1 projects, an EIA is mandatorily required. For Schedule 2 projects, an EIA is required where the development is likely to have a significant impact on the environment by virtue of its nature, size or location. Generally, for the purpose of determining whether EIA is necessary,

[869] Statutory Instruments 2011 No. 1824, made 19th July, 2011, Laid before Parliament 26th July, 2011 and came into force on 24th August, 2011.

[870] Statutory Instruments 2015 No. 660, The Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015, made 11th March, 2015, laid before Parliament 12th March, 2015 and came into force on 16th April, 2015. The Regulations basically amended Schedule 2 projects to include industrial estates development projects where the area of development exceeds 5 hectares. For urban development projects, including construction of shopping centres and car parks, sports stadium, leisure centres and multiplex cinemas where the development includes more than 1 hectare, more than 50 dwellings or the overall area of development exceeds 5 hectares. For construction of intermodal transshipment facilities or terminals, where the area exceeds 0.5 hectare.

[871] Statutory Instruments, 2017 No. 580, m*ade 21st April 2017, laid before Parliament 24th April 2017, coming into force from 16th May 2017*. The objective is for the regulation of electricity works in England and Wales.

[872] EIA Regulations (2011) s.4(1)(b) and (4)(a).

consideration must also be had to Schedule 3 projects in order to ascertain the nature size and location of the projects.[873]

The Planning Authority or Secretary of State shall decide the criteria relevant to the screening of the development.[874] The planning authorities may be Local Planning Authority; Joint Planning Boards; Joint Planning Committee for Greater London; Planning Committees for National Parks, Enterprise Zones, Urban Development Areas, and Housing Action Areas. Requirement of terms of reference for EIA process is probable. The proponent may ask the relevant planning authority to state in writing their opinion as to the information to be provided in the environmental statement, also known as 'scoping opinion.'[875] There is no public involvement in this process, and thus not subject to public review.

Proponent with or without accredited consultants (EIA contractor), and the proponent bears the full cost for the conduct of the EIA process.[876] Thus the developer may employ independent consultancies in the relevant areas for the EIA process. However, interest of the developer in the conduct of the EIA process must not conflict with that of the Planning or approving authority. Thus approval or decision on the EIA report which must be in writing is not automatic as it must conform to the Planning Authority mandate in protecting the environment.[877] Planning applications are to be determined within 56 days after submission; however this time frame may be extended at the discretion of the Local Planning Authority. The Planning Authority has power to impose conditions which must be met in the EIA report; else it would withhold its approval for the commencement of the project. There is no requirement for financial assurances or bond before the commencement of the project when approved.

[873] EIA Regulations, (2011) s. 4.
[874] EIA Regulations, s.4(3) - (6).
[875] EIA Regulations, (2011) s. 13(1).
[876] Regulations, (2011) s. 8(1)(b); 22(1).
[877] EIA Regulations, (2011) s. 24(1).

There is no provision for an interdisciplinary team in the conduct of the EIA, but the EIA procedures basically include range of alternatives or options. Accordingly, an EIA must contain "an outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for the choice made, taking into account the environmental effects.[878] Thus, the No Action Alternative is not practicable. Types of impact analysis required include: direct environmental impacts; cumulative environmental impacts; and cultural impacts. The mitigation and monitoring plans of the activity are covered in the description of the planned measures to be implemented to prevent, reduce and where possible mitigate any significant adverse effects of the proposed project on the environment.[879]

Draft EIA reports are generally not available for public input. However, there is public notice of the final EIA report. The public must be informed of the final decision through local advertisement in a newspaper circulating in the project area and other reasonable means.[880] For example, final EIA reports are usually published on-line, as hard copies are relatively expensive to obtain.[881]There is provision for public interest, in terms of participation in the EIA process, including scoping, public meetings or hearings with opportunity for members of public to speak.[882] Although draft EIA reports are not subject to public review, it is allowed for review in final EIA report within 28 days, after its submission by the proponent. Consequently, the public comments and responses thereto are summarised in a report produced by the Local Planning Authority for the decision making body. Permit for planning and development is renewable every 5 years.[883]

With regard to enforceability of the EIA, both the planning authority and Secretary of State for Communities and Local Government can issue enforcement notice

[878] EIA Regulations, (2011) Schedule 4, Part I, s. 2.
[879] EIA Regulations, (2011) Schedule 4, Part I, s. 5.
[880] EIA Regulations (2100), s.2.
[881] EIA Regulations, (2011) s. 24(1)(b).
[882] EIA Regulations, (2011) s. 24.
[883] Town and Country Planning Act, 1990, s. 91.

on a developer in breach of planning or EIA conditions.[884]Citizens are given opportunity to appeal to the Secretary of State against the decision taken by a local planning authority refusing an application for planning permission or granting it subject to conditions. Notice of intent to appeal must be filed within 28 days after the date of the decision of the local planning authority.[885] The Secretary of State may allow or dismiss the appeal and his decision shall be final.[886]

Importantly, the decision of a local planning authority may also be reviewed by the Secretary of State, where compensation is claimed and no person shall carry on with the development until the compensation determined has been paid to the claimant to the satisfaction of the Secretary of State.[887] Compensation is also payable to a developer in respect of expenditure incurred in carrying out any work on the land over which the government acquires an interest for public purpose.[888] Furthermore, a claimant is entitled to issue blight notice to the planning authority to the effect that due to the approved development in his area of land, the interest in the property has depreciated, following which the authority is also entitled to issue a counter-notice by way of objection to the blight notice.[889] The objection is referred to the Land Tribunal for determination and making of appropriate orders.[890]

In respect of project monitoring and mitigation, a planning authority may issue enforcement notice, which may be appealed against to the Secretary of State, who has the final authority to issue and enforce the notice within 4years in case of a breach of the terms of the planning or development permit.[891] Thus, erring developer must take steps to

[884]Ss. 30, EIA Regulations, (2011); and 172, 173, and 182 of the Town and Country Planning Act, 1990.
[885] Town and Country Planning Act, 1990, S. 78(1) and (4).
[886] Town and Country Planning Act, 1990, S. 79 (1) and (5), and s. 169(2).
[887]Town and Country Planning Act, 1990, ss. 80 and 111.
[888]Town and Country Planning Act, 1990, s.144.
[889]Town and Country Planning Act, 1990, ss. 150 and 151.
[890]Town and Country Planning Act, 1990, s.153.
[891] Town and Country Planning Act, 1990, s. 172.

restore the land to its condition before the development, including demolition of any alteration or building works.[892]

5.4 South Africa: National Environmental Management Act of 1998 (NEMA) (as amended)and Environmental Impact Assessment Regulations, 2010

In South Africa, the legal framework for environmental impacts assessment is the National Environmental Management Act of 1998 (NEMA) (as amended[893]). Environmental Impact Regulations are contained in a single document known as Environmental Impact Assessment Regulations.[894] Each State may also prepare its EIA Guidelines for instance, the Western Cape Government EIA Guideline and Information Document Series of March 2013. The NEMA (as amended) is an Act which provides for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will promote cooperative governance and procedures for coordinating environmental functions exercised by organs of state; to provide for certain aspects of the administration and enforcement of other environmental management laws; and for matters connected therewith.[895]

Projects Requiring EIA are both government and private projects, and the assessment report is prepared in abridged form, details of which shall include: the content of basic assessment reports such as the accredited environmental assessment practitioner or personnel (EAP);[896] opportunity for public participation;[897] a draft environmental management plan; an alternatives analysis in the event that the project is not suitable for

[892] Town and Country Planning Act, 1990, s. 173.
[893] National Environmental Management Act 56 of 2002; Mineral and Petroleum Resources Development Act 28 of 2002; National Environmental Management Amendment Act 46 of 2003; National Environmental Management Amendment Act 8 of 2004; National Environmental Management Amendment Act 62 of 2008; National Environmental Management Laws Amendment Act 44 of 2008; and National Environmental Management Laws Amendment Act 14 of 2008.
[894](Government Notice No.R.543 of June 18, 2010 – corrected by Government Notice No. R.660 of July 30, 2010 and Government Notice No. R.1159 of December 10, 2010).
[895]Long Title of the NEMA (as amended).
[896] EIA Regulations, s.22.
[897] EIA Regulations, s. 21(2).

the location of the impacts assessment; and a description of any assumptions, uncertainties and gaps in knowledge.[898]

Strictly, there is no best practice that may be adopted by a project developer in lieu of EIA. The developer conducts screening via EIA contractor to determine whether a basic assessment or a scoping and environmental impact reporting process is necessary, taking into account applicable guidelines and any advice provided by the competent authority.[899] Criteria for screening are specified for the type of projects for which an environmental impact assessment must be conducted, for instance, activities in sensitive areas.

The project proponent with or without the contractor executing the project is responsible for the conduct of the EIA and bears the cost. Also, the proponent must appoint an accredited environmental assessment practitioner (EAP) to manage the application and prepare the environmental impact report.[900] The qualifications of the accredited EAP are specified to the extent that he must be independent, have expertise in conducting environmental impact assessment, comply with regulations, and disclose potential conflicts.[901] However, where the proponent applies to the Agency to be exempted from using an EAP, he must perform the tasks required of an EAP as indicated in this guideline.[902]

Where there is conflict of interests and the competent authority has reason to believe that an EAP did not comply with the regulations or did not act independently, it may refuse to accept the reports or input from the contractor and may request the project proponent to commission an external review of the reports prepared by the contractor,

[898] These are fully explained in Chapter 3, Part 2 of the EIA Regulations.
[899] EIA Regulations, s. 19.
[900] EIA Regulations, s. 16(1).
[901] EIA Regulations, ss. 16(2)(a) and 17
[902] NEMA, s. 24M(1); EIA Regulations, s. 50; and the Guideline on Public Participation, EIA Guideline and Information Document Series (March 2013) at 5, http://eadp.westerncape.gov.za/sites/default/files/your-resource-library/EIA%20Guidelines%20%26%20Info%20Doc%20Series%20March%202013.pdf (accessed May 2, 2017).

redo any specific aspects of the work, or complete any unfinished work.[903] An interested and affected party may also notify the competent authority of suspected non-compliance on the part of an EAP, for which reason the EIA outcome would be rejected, after satisfactory investigation of the allegation by the regulatory authority.[904]

The terms of reference prior to the conduct of the EIA are contained in the 'scoping report' prepared by the EIA contractor and submitted to the competent authority for review and approval. Thus, where the competent authority accepts a scoping report and advises the EAP to proceed with the tasks contemplated in the plan of study for environmental impact assessment, the EAP must proceed with those specific tasks.[905] The plan of study for environmental impact assessment is a document that forms part of a scoping report and sets out how an environmental impact assessment must be conducted.[906] It is expected that within 60 days, the appropriate authority would have approved or rejected the report, following which it also make its final decision 45 days thereafter. The outcome of the decision must be in writing and there is no position for automatic approval. Where the time timeframe within, which to make the decision elapses, the project proponent may seek judicial review for extension of time.[907]

On the refusal of the EIA report by the appropriate authority, the proponent has opportunity to appeal the decision.[908] On the other hand, where the EIA report is approved, the Agency must specify the condition under which the approval can be undertaken; and the permit holder must furnish environmental audit reports on the impacts of the authorized activity on the environment, and may 'include any other condition that the competent authority considers necessary for the protection of the

[903]EIA Regulations, s. 18
[904] EIA Regulations, sec. 18(2)(3).
[905] EIA Regulations, s. 31(1).
[906] EIA Regulations, s. 1(1) and 28(1)(n).
[907] EIA Regulations, s. 9(3)-(4).
[908]EIA Regulations, ss. 10(1) and 37.

environment'.[909] Once the Agency takes its decision on the conduct of the EIA, its validity is indefinite, unless specifically delimited in the approval.[910]

There is also the requirement of Financial Assurances or Bond by the project proponent in the event of any adverse impact or outcome of the project, the money or security would be forfeited. The provision is couched as follows:

An applicant for an environmental authorisation relating to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area must make the prescribed financial provision for the rehabilitation, management and closure of environmental impacts, before the Minister of Minerals and Energy issues the environmental authorisation.[911]

There is no provision for an interdisciplinary team in the conduct of the EIA, but the EIA procedures basically include range of alternatives or options. Thus after the investigation of the potential consequences or impacts of the alternatives to the activity on the environment and assessment of the significance of those potential consequences or impacts, the EIA must include the option of not implementing the activity.[912] Where there is no feasible alternative, this fact must be well detailed written proof after the conduct of the EIA by the Environmental Assessment Practitioner and submitted to the competent authority.[913]

Types of impact analysis of projects required include: direct environmental impacts; cumulative environmental impacts; social impacts; cultural impacts; economic impacts. The mitigation and monitoring plans of the activity are also required.[914] With respect to project monitoring, the environmental management framework must be

[909] EIA Regulations, s. 37(2)(a)-(f).
[910] EIA Regulations, s. 37(d)(1).
[911] NEMA, s. 24P(1). The Minister may make the financial provision applicable to other applications. NEMA, s. 24P(7). See also NEMA, ss. 24(5)(b) and (d), 24P, and 24R; EIA Regulations, ss. 33(g)(v) and 37(1)(d).
[912] NEMA (as amended), s. 24(4)(b)(i); see also EIA Regulations, s. 31(2)(g), (i).
[913] NEMA s. 24(4)(b)(i)and EIA Regulations, s. 31(3).
[914] NEMA (as amended), ss. 24(4)(b)(ii), 24N. See also EIA Regulations (2010), ss. 22(i)(vii), 31(2)(l)(vii) and 33(e) (describing contents of draft environmental management programme).

monitored on a regular basis, and must include plans for the monitoring and management of consequences for or impacts on the environment, as well as the assessment of the effectiveness of such plans after their implementation.[915] An audit is also required in cases where competent authority reasonably suspects that the project proponent has failed to comply with a condition of the environmental authorization and that the failure to comply has caused, or may cause harm to the environment.[916]

There is provision for public interest, in terms of participation in the EIA process:[917] scoping;[918] public review of terms of reference contained in the scoping report; public input[919] in the review of the EAP's decision on the EIA;[920] access to information regarding the conduct of the EIA as well as the draft EIA report, available at the Agency's office, and after which the final EIA detail or document is made available to the public at no cost. Strictly, the project proponent must within 12 days of the decision on his application 'notify all registered and affected parties of (i) the outcome of the application; and (ii) the reasons for the decision.[921] The project proponent is also required to notify all registered interested and affected parties how they can access the decision and, if available, that an appeal may be lodged against the decision, as well as to publish a notice of the decision, of access to the decision, and of the opportunity to appeal (if available) in newspapers.[922] Importantly, a person conducting public participation must ensure that 'participation by potential interested and affected parties is facilitated in such a manner that all potential interested and affected parties are provided with a reasonable opportunity to comment on the application'.[923] The person must use 'reasonable alternative methods' (as agreed to by the competent authority) to

[915]NEMA, s. 24(4)(b)(v).
[916] EIA Regulations, s. 69.
[917] EIA Regulations, s. 54(7).
[918]EIA Regulations, ss. 28 and 29.
[919] EIA Regulations, ss. 55(2); 56(1)(2) and 57(1).
[920] EIA Regulations, s. 27(g).
[921] EIA Regulations, s. 10(2)(a).
[922] EIA Regulations, s. 10(2)(b)-(d).
[923] EIA Regulations, s. 54(7).

accommodate illiteracy, disability or any other disadvantages.[924] If a participant cannot provide written comments due to lack of literacy, disability or other disadvantage, reasonable alternative methods of recording comments must be provided for.[925]

Citizens are given opportunity to appeal to the Minister against the decision taken by a delegate of the Minster. The application is brought for administrative review of the decision taken by the project proponent, or the authorising agency.[926] Notice of intent to appeal must be filed within 20 days after the date of the decision.[927]

An important and novel provision of the law is protection of whistleblowers with respect to reporting incidents or projects capable of causing environmental hazards, or where the hazard has already occurred. Thus, notwithstanding the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information, if the person in good faith reasonably believed at the time of the disclosure that he or she was disclosing evidence of an environmental risk and the disclosure was made in his own right of choice. The information must have been disclosed to (i) a Committee of Parliament or of a Provincial Legislature; (ii) an organ of state responsible for protecting any aspect of the environment or emergency services; (iii) the Public Protector; (iv) the Human Rights Commission; (v) any attorney-general or his or her successor; (vi) more than one of the bodies or persons referred to in subparagraphs (i) to (v). The channel of the disclosure includes news media and the grounds for the disclosure must be convincing and to avert an imminent and serious threat to the environment, to ensure that the threat to the environment was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; and the need for disclosure in public interest outweighs the need for nondisclosure.[928]

[924] EIA Regulations, s. 54(e).
[925] EIA Regulations, s. 57(2).
[926] NEMA. NEMA, s. 43(1).
[927] EIA Regulations, s. 60.
[928] NEMA, s.31 – Access to environmental information and protection of whistle-blowers.

An informant whose evidence leads to the conviction and recovery of a specific sum for an offence on the protection of the environment is awarded a sum not exceeding one-fourth of the fine. However, a person in the service of an organ of state or engaged in the implementation of this Act or a specific environmental management Act is not entitled to such an award.[929]

With respect to locus *standi* to sue on environmental matters, it is enacted thus:

> Any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act, including a principle contained in any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources -
> (a) in that person's or group of person's own interest;
> (b) in the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings;
> (c) in the interest of or on behalf of a group or class of persons whose interests are affected;
> (d) in the public interest; and
> (e) in the interest of protecting the environment.[930]

Notably, too, the jurisdiction of court on environmental matters extends to the Magistrate Courts. Thus, notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act or any specific Environmental Management Acts.[931]

5.5 **Kenya: Environmental Management and Co-Ordination Act, 1999 (EMCA as amended), EMCA Regulations, 2006 and the Environmental (Impact Assessment and Audit) Regulations, 2003**.

In Kenya, the legal framework for environmental impacts assessment includes: the Environmental Management and Co-Ordination Act, 1999 (EMCA as amended), EMCA Regulations, 2006 and the Environmental (Impact Assessment and Audit) Regulations, 2003.The EMCA establishes the National Environment Management Authority in giving effect to the entitlement of citizens to a clean and healthy environment.[932]

[929][929]NEMA, 34B. Award of part of fine recovered to informant.
[930] NEMA, s.32(1).
[931] NEMA, s. 34H.
[932]EMCA, ss. 3 and 7.

Both government and private projects require EIA and the assessment report is prepared in abridged form, details of which must include: the nature of the project; design and activities; the potential environmental impacts and mitigation measures to be taken during and after implementation; an action plan for prevention and management of possible accidents; a plan to ensure health and safety of workers and nearby communities. The report must be prepared by a registered EIA expert. The EIA Authority has 45 days to review the report and determine whether an EIA is warranted.[933]

Strictly, there is no best practice that may be adopted by a project proponent in lieu of EIA. The Government conducts screening, after the proponent had submitted a project report to the appropriate Authority; and within 45 days the Authority must decide whether the proponent must prepare an EIA study.[934] The screening activity determines whether the project or activity types may cause significant environmental impacts. For example, requirement of EIA is mandatory for category of projects under Schedule 2, that is, any activity that 'may introduce exotic species' or 'lead to unsustainable use of any ecosystem'.[935]

The project proponent with or without the contractor executing the project is responsible for the preparation of the EIA study and at his own expense.[936] Provision is made on the qualification of an EIA contractor or expert which shall be 'individual experts or a firm of experts authorised in that behalf by the Authority'.[937] In case of conflict of interests, an EIA expert may be de-registered for contravening the code of practice issued by the Authority.[938]Terms of reference are usually developed during scoping exercise activity by the proponent and government authority, and the terms must be strictly followed in terms of the conduct of the EIA.[939] Within 90 days after the

[933] EIA Regulations, ss. 7-10.
[934] EIA Regulations (2003) ss. 7-10.
[935]EMCA, s.58(1); EMCA Regulations (2006) s. 4; and EIA Regulations (2003) s. 4.
[936]EMCA s. 58(2).
[937]EMCA Act s. 58(5); EIA Regulations (2003) s. 14.
[938] EIA Regulations (2003) s. 14(5).
[939] EIA Regulations (2003) s.11(1).

conduct of the EIA, the appropriate authority should issue approval for the project, and approval is automatic for projects in respect of which an EIA had been conducted. Thus, a proponent who after the EIA report and application to commence the project does not receive any communication from the Director-General within the stipulated time may within nine months of such submission start his undertaking.[940]

The outcome of the decision must be in writing,[941] in which the Authority issues an environmental impact assessment license 'on such terms and conditions as may be appropriate and necessary to facilitate sustainable development and sound environmental management'.[942] Strictly, there is no expiration date of the decision taken by the Authority; once taken the decision timeframe is indefinite; but the Authority may require a fresh EIA if the project changes, the project poses a new environmental threat, or it is established that the EIA was false, inaccurate or intended to mislead.[943] Interestingly, An environmental impact assessment licence may be transferred by theholder to another person only in respect of the project in relation to which suchlicence was issued; and the person to whom it is transferred and the person transferring it shalljointly notify the Director-General in writing of the transfer, not later than thirty daysafter the transfer[944]

Financial assurances or bond varies with proponent and the type of project. Thus, a bond is not automatically required, but 'the Minister responsible for finance may, on the recommendations of the Council, prescribe that persons engaged in activities or operating industrial plants and other undertakings . . . pay such deposit bonds as may constitute appropriate security for good environmental practices'.[945]

There is no provision for an interdisciplinary team in the conduct of the EIA, but the EIA procedures basically include range of alternative EIA studies, which must

[940]EMCA s. 58(9).
[941] EIA Regulations (2003) s. 23(2).
[942] EMCA s. 63, see also EIA Regulations (2003) s. 24.
[943]EMCA s. 64(1).
[944]EMCA, s.65.
[945]EMCA s. 28(2).

identify and analyze alternatives to the proposed project.[946] Similarly, there is no provision for 'No Action Alternative'.Types of impact analysis required include: direct environmental impacts; cumulative environmental impacts; social impacts; cultural impacts; economic impacts. The mitigation measures to be taken during and after implementation of the project, as well as monitoring plans for compliance and environmental performance of the activity are also required.[947] In project monitoring, the Authority is required to carry out an environmental audit of all activities that are likely to have a significant effect on the environment,[948] while the owner or operator of project shall prepare and submit an environmental audit report to the Authority annually (or more frequently if the Authority requires).[949]

There is no provision for draft EIA report, but there is public notice of it, upon receipt of the environmental impact assessment study report to the Authority, which must publish the notice for two successive weeks in the Gazette and in a newspaper circulating in the area of the proposed project. An announcement must be made via radio in official and local languages at least once a week for two successive weeks.[950] The final EIA study report must include times & place where the full report can be accessed at the Agency's office and at no fee.[951]

There is public access to information on the goings-on and outcome of the EIA process. Any information or documents submitted to the Authority by any person in connection with an environmental impact assessment . . . shall be made available to the public on such terms and conditions as the Authority may prescribe.[952] There is also room for public review of final EIA report and participation during scoping as the proponent is required to convene at least three public meetings with the affected parties and

[946] EIA Regulations (2003) s.16(b).
[947] EIA Regulations (2003) s. 16(d).
[948]EMCA s. 68(1).
[949]ECMA s. 68(3).
[950]EMCA s. 59(1); EIA Regulations (2003) s. 21(2).
[951]EIA Regulations (2003) s. 21(3)(d).
[952] EIA Regulations (2003) s. 29.

communities to explain the project and its effects, and to receive their oral or written comments during and after submission of the EIA report to the Authority.[953] There is however no room for public review of terms of reference.

There is no required number of days or stipulated time for the public review of draft EIA, as the public is not expected to make comments on the draft EIA report, except on the final EIA report and within 90 days after notice of the availability of the final EIA report has been given to the public for submission of oral or written comments on the EIA study.[954] Proponent shall ensure that a qualified coordinator is appointed to receive and record public comments and any translations thereof.[955] Radio notice must be in the local language of the community.[956] Although there is no requirement that the Authority or project proponent must respond to public comments during the meeting, but in making a decision, the Authority shall consider interested parties' comments.[957]

The citizens have no opportunity for administrative review of any decision that is not in their interest. Thus, there is no civil or criminal liability in respect of a project or consequences resultingfrom a project shall be incurred by the Government, the Authority or any impactassessment study, evaluation or review report or grant of an environmental impactassessment licence or by reason of any condition attached to such licence.[958]However, they have opportunity to apply for judicial review. Consequently, any person aggrieved by a decision or order of the Authority of an environmental impact assessment licence, may within 60 days of such a decision or order, appeal against such decision or order to the High Court.[959]

With respect to right of citizens to enforce the provisions of an EIA report, they cannot, but a citizen can enforce the requirements of a permit against the permit holder by

[953] EIA Regulations (2003) s. 17(2)(b). This is distinct from the public meeting held by the Authority which is discretionary. EIA Regulations (2003) s. 22(1).
[954] EMCA s. 59(1)(d).
[955] EIA Regulations (2003) s. 17(2)(d).
[956] EIA Regulations (2003) s. 22(3)(b).
[957] EIA Regulations (2003) s. 23(3)(b).
[958]EMCA, s. 66.
[959] EIA Regulations (2003) s. 46(2).

filing a suit in the High Court when his right to a clean environment is being or is likely to be contravened, regardless of whether he can show personal injury.[960]

5.6 Australia–NSW: Environmental Planning and Assessment Act 1979 (NSW EPA) and Environment, Planning and Assessment Regulation 2000 (NSW EPAR)

In Australia–NSW, the legal framework for environmental impacts assessment includes: Environmental Planning and Assessment Act, 1979 (NSW EPA) and Environment, Planning and Assessment Regulation, 2000 (NSW EPAR). It is important to state that in Australia, States are entitled to enact their specific laws on environmental impacts assessment. This is akin to some laws over which the Federal and States Governments can legislate in Nigeria. However, where the federal government has legislated on a particular subject, the doctrine of covering the field is implied and the States or Federating Units are only required to adopt the said federal law as a State law. Example of such laws in Nigeria include: Criminal Code Act, Criminal Procedure Act, Child's Rights Act, etc. Accordingly, the environmental impacts assessment law and regulations under review are those of Australia - New South Wales, with its capital as Sydney.

Both government and private projects require the conduct of EIA. Where there is conflict of interest in a development activity between the government and project developer or in circumstances where the development consent is tainted by corruption, the development activity would be suspended by the Minister or Court.[961] Strictly, the consent authority must notify the proponent or EIA applicant of its decision in writing.[962] Accordingly, where the consent authority does not determine the application for approval of designated project within 60 days of the application, the presumption is that consent is refused or denied.[963] Although there is no requirement of financial assurance or bond, the

[960] EMCA, Part II.
[961] EPA, s.124A.
[962] EPA, s.81(a).
[963] EPA, s.82(1).

consent authority can impose conditions by granting an application subject to certain conditions.[964]

The EIA procedure includes a range of alternatives, having regard to the objectives of the project including a consideration of the consequences of not carrying out the development or activity. Thus, the law provides for a situation where the no action alternative may be adopted. That is, where not taking any action is preferable to taking any action at all. There is provision for monitoring plans following which the Minister of Environment may impose certain conditions on a project requiring monitoring or environmental audit.[965] Thus, the Environmental Impacts Statement (EIS) must include the measures proposed to mitigate any adverse environmental effects or outcome of the project.[966]

The law provides opportunity for public participation in the EIA process in terms of: scoping; access to information; public comments at least 30 days from the date of notice;[967] public notice of final EIA report including EIS displayed clearly at the location of the proposed development[968] and published in two separate newspapers circulating in the area[969]. The Notice must state that the application and EIS may be inspected at designated places.[970] The consent authority must also give notice of its final decision to the applicant, any person who made submissions for review and any other person required in the regulations.[971] After public review of the EIA report, the final decision on the report is available for public view and purchase at office of the Consent Authority.[972] Notably, in determining a development application, the Authority must take into consideration any submissions made during the public review of the process, which it had

[964]EPA, s.80.
[965]EPA, s. 122C.
[966]EPAR, schedule 2 part 5.
[967] EPA, s.79(1) (a)(5).
[968] EPAR, Reg 79(1).
[969] EPAR, Reg 80.
[970] EPAR, Reg 79(1)(e)(iv).
[971] EPA, s.81(a).
[972] EPAR, Reg 75.

forwarded to its Director-General for his own views, at least 21 days after the public review.[973]

In case of any objections to the final decision of the Authorising Authority on the EIA of the proposed development, an aggrieved person may appeal to the Court within 28 days of receiving the notice.[974]

5.7 Japan:Environmental Impact Assessment Law, Law No. 81 of 1997

In Japan, the legal framework for environmental impacts assessment is the Environmental Impact Assessment Law, Law No. 81 of 1997. EIA is required for both government and private projects. Although there is no specific provision for abridged format assessments, no best practices in execution of a project can be adopted in lieu of EIA. Worthy of note is that the proponent prepares the scoping document for the proposed project, which the government uses to conduct the screening, after making the scoping document available to the public for submission of comments and public review of the document.[975]After the screening, the government through the prefectural governor sends its report to the project proponent on the scoping document to serve as a guide for the conduct of the EIA, and the proponent must give due consideration to comments expressed in the report.[976]For class 2 projects, screening is conducted to ascertain whether they require full-scale EIA. However, for class 1 projects, full-scale EIA is mandatory or automatically required.[977]

Criteria for screening are specified for the type of proposed projects which may cause significant environmental impacts for which the screening judgement is made by the authorizing agency in accordance with the consideration of opinions from the prefectural governor[978] who is well-acquainted with the local situation or environment.[979] The project proponent with or without the contractor executing the project is responsible

[973] EPA, ss. 79C(1)(d), and 80(9) (b).
[974]EPA, ss. 79(5), 81(3) and 98.
[975]EIA Law, Art.6, 7, 8, and 9.
[976]EIA Law, Art.10 and 11.
[977]EIA Law, Art. 4.
[978] This is equivalent to a Chairman of Local Government in Nigeria
[979]EIA Law, Art. 4.

for the preparation and conduct of the EIA and bears the cost.[980] The qualifications of the EIA contactor are not specified in the law. The law does not also provide for what will happen in case the conduct of the EIA conflicts with the interest of the authorising agency. However, terms of reference that serve as a guide in the conduct of the EIA are got from public responses during scoping of the proposed project done to identify the key issues of concern on the project at the earliest stage possible.

After submission of the EIA draft report, the time limit within which the approving authority must take its decision on the report is 210 days. Thus, approval is not automatic as the approving authority reserves the right to either approve or refuse the draft report. Where approval is given, the authority may impose conditions to the licence, or other required permits.[981] There is no definite time limit to the validity of the approval of the final EIA; and there is no requirement of security for mitigation of any potential adverse impacts in form of financial assurance or bond.

The EIA procedures basically include range of alternatives or options determined by specific ministerial regulations for each sector. Thus, the No Action Alternative is not practicable. The type(s) of impacts for which an analysis is carried out are direct environmental impacts. The law allows for mitigation measures to the extent that draft environmental impacts statement (EIS) must include measures for protecting the environment, including details regarding how such measures were developed.[982]

Public interest is protected in terms of participation in the EIA process, such as: public access to information on the conduct and outcome of the EIA; scoping[983] which is done within two weeks of the publication of notice of the activity to the public; access to the draft EIA for public comments and reviews;[984] access to and review of the final EIA,

[980]EIA Law, Art. 5.
[981]EIA Law, Art.33(2).
[982] EIA law Art. 14(7)(b).
[983]EIA Law, Art. 5.
[984]EIA Law, Art.7, 8, 11, 16, 17, and 18.

prepared in accordance with the regulations from the office of the Prime Minister;[985] and mandatory public meetings where the proponent clarifies the public about the contents of the draft EIS for possible comments and review.[986] The law allows for public comments on final EIA, as well as response to the comments by the proponent before it gets to approving authority. Thirty (30) days each is required for the review of both draft and final EIS, totaling 60 days for public reviews of the EIA processes before submission to the approving authority for its decision. Comments regarding the scoping document must be addressed in the draft EIS.[987] The proponent shall provide a document containing an outline of all comments received on the draft EIS and the proponent's views regarding such comments.[988]

In the same vein, public comments concerning the draft EIS are considered in the preparation of the final EIA report.[989]The proponent shall after the preparation of the EIS summary or information[990] make same available to the public for possible review, for one month from the date of such publication.[991] The proponent submits the draft EISto Issuers of Licenses or Approvals, who will forward same to the Director- General of the Environment Agency for his opinions on the EIS. Consequently, the opinions of the DG as well as the Issuers of licences are referred back to the proponent for consideration of same in reviewing the EIS. After a holistic consideration of the comments and opinions for the purpose of preparing a final EIA report; there may be need to amend the relevant project.[992]There is however, no provision for citizens'right to apply for either administrative or judicial review.

[985]EIA Law, Art. 16.
[986]EIA Law, Art.17 and 18.
[987]EIA Law, Art.14(1).
[988]EIA Law, Art. 19.
[989]EIA Law, Art.21(2).
[990]This is unlike Nigeria where the EIS is the document issued by the Federal Ministry of Environment to a proponent indicating that he had conducted the EIA of proposed project. With the EIS the proponent goes to NESREA from where he is issued a certificate of compliance with the EIA process and it is from the contents of the EIS that the proponent would be monitored during the execution of the project to endure he does not violate the contents of EIS.
[991]EIA Law, Art. 27.
[992]EIA Law, Art.22, 23, 24 and 28.

5.8 **China:Law of the People's Republic of China on Evaluation of Environmental Effects; Chinese Plan Environmental Impact Assessment Regulations, 2009, Environmental Protection Law of the People's Republic of China, 2014and EIA Guidelines on Atmospheric Environment:**

In China, the legal framework for environmental impacts assessment includes: Law of the People's Republic of China on Evaluation of Environmental Effects, 2002;[993] Chinese Plan Environmental Impact Assessment Regulations, 2009, Environmental Protection Law of the People's Republic of China, 2014and EIA Guidelines on Atmospheric Environment.Both government and private projects require EIA, the assessment report is prepared in abridged form for two out of three categories of projects for potential environmental impacts where the said two categories of projects are anticipated to have mild or very little impact.[994] For some government projects involving land use, what is required is not full EIA, but only an 'explanation of environmental effects' within the plan of the project.[995]

There is no requirement of best practice that may be adopted by a project proponent[996] in lieu of EIA. The government conducts the screening of the project site for the purpose of conducting an EIA. The construction unit simply files a registration form describing the anticipated environmental effects; and depending on the severity of the effects, the State determines what level of assessment is required.[997] There is also a published catalogue of construction projects. Criteria for screening are based on project or activity types. For instance, where a proposed project or activity may cause significant

[993] Adopted at the 30th Meeting of the Standing Committee of the Ninth National People's Congress of the People's Republic of China on October 28, 2002, and promulgated by Order of the President No.77 to become effective from September 1, 2003.
[994]EIA Law, Art.16(2), (3).
[995]EIA Law, Art. 7.
[996]Project proponent may also be termed 'Construction Unit' in the Chinese law.
[997]EIA Law, Art. 16.

environmental impact, a comprehensive evaluation of the effects on the environment shall be made.[998]

The project proponent with or without the contractor executing the project is responsible for the conduct of the EIA and bears the cost. In carrying out an EIA, a project proponent must retain the services of accredited EIA contractors, considered qualified and issued certificates after being examined by the competent administrative department for environmental protection under the State Council.[999]

With respect to conflict of interest, where an environmental impact report (EIR) is inconsistent with facts due to any consultant's fraud, punishments apply to the person in charge and other personnel with responsibilities in conformity with legal provisions.[1000] Similarly, legal responsibility is personal with respect to enforcement of the provisions of the law. The law provides thus:

> Where staff members of the competent administrative department for environment protection and other departments, engaging in malpractices for personal gains, abusing their powers, or neglecting their duties, approve the documents for evaluation of the environmental effects of construction projects in violation of law, they shall, according to law, be given administrative sanctions; and if a crime is constituted, criminal responsibility shall be investigated according to law.[1001]

There is no provision for terms of reference prior to the conduct of an EIA, but decision making or review of decision of the competent authority shall be within 60 days, following which the EIA report may be approved or rejected. The outcome of the decision must be in writing.[1002]There is no clear provision of authority to impose conditions, but the EIA Law provides that the project proponent 'shall simultaneously implement the measures for project of the environment contained in the comments and suggestions put forth by the examination and approval department'.[1003] Every decision or approval given by the appropriate authority on an impact assessment is renewable after 5

[998]EIA Law, Art.16(1).
[999]EIA Law, Art. 19.
[1000]EIA Regulations, 2009, Arts. 31-34.
[1001]EIA Law (2002) Art. 35. Legal responsibility is provided generally by Articles 29 – 35 of the Law.
[1002]EIA Law (2002) Art. 22.
[1003]EIA Law (2002) Art. 26.

years. Thus aster 5 years, the project proponent must submit the original EIA to the examination department for 'verification anew'. The examination department shall conduct this verification within 10 days.[1004]

There is no provision for 'No action Alternative' and the EIA process is conducted in respect of certain types of impacts, including: direct environmental impacts. The mitigation plans for public projects are contained in the government plans.[1005] For private projects, the EIA must contain 'protective measures for the environment' and (where applicable) a 'plan for soil and water conservation'.[1006] Similarly, an EIA report must contain a proposal for monitoring the environment of the construction project.[1007] Furthermore, where in the process of executing a project, any circumstance is inconsistent with the EIA, the project or construction entity shall organize a post-appraisal of the environmental impacts, and take measures for improvement.[1008] In addition, the appropriate agencies or authorities must conduct follow-up inspections of the environmental effects of a project after the project is put into production or use. Where serious pollution has occurred, the causes shall be ascertained and responsibility shall be investigated.[1009]

The public is not given opportunity to participate in the scoping stage, but they are allowed access to information on the EIA process and the draft EIA report is made available by the project proponent for public comments and review or input before it is submitted to the appropriate authority, which makes the final EIA report available to the public.[1010] Strictly, public participation in the EIA process is mandatory, but the number of days within which it may be held is not specified, implying that the meeting for public participation is flexible and may be at any time but before the final EIA report. Once a

[1004]EIA Law (2002) Art. 24.
[1005]EIA Law (2002) Art. 7.
[1006]EIA Law, Art. 17.
[1007]EIA Law, Art.17(6).
[1008]EIA Law, Art. 27.
[1009]EIA Law, Art. 28.
[1010]EIA, Law Art. 21.

draft EIA has been deliberated upon and submitted to the relevant authority, and finalized into the final EIA report, there would be no more opportunity for public comments on the report. Another important aspect of the EIA process in Article 21 of the law is that the project proponent must include an explanation of whether the opinions of relevant entities, experts and the general public on the draft EIA were considered or not (accepted or rejected). However, the law does not require the relevant authorities to consider public comments when deciding whether to approve a project.

5.9 **Environmental Protection Law of the People's Republic of China (as amended)**

This is a Chinese national law enacted for the purpose of protecting and improving environment,preventing and controlling pollution and other public hazards, safeguarding publichealth, promoting ecological civilization improvement and facilitating sustainableeconomic and social development. The amended Law was adopted at the 8th Meeting of the Standing Committee of theTwelfth National People's Congress of the People's Republic of China on April 24, 2014, to become effective from January 1, 2015. The law places the obligation of safeguarding the environment from pollution on the government as well as citizens as follows:

> All units and individuals shall have the obligation to protect the environment. Local people’s governments at various levels shall be responsible for the environment quality within areas under their jurisdiction.Enterprises, public institutions and any other producers/business operators shall prevent and reduce environmental pollution and ecological destruction, and shall bear the liability for their damage caused by them in accordance with the law. Citizens shall enhance environmental protection awareness, adopt low-carbon and energy-saving lifestyle, and conscientiously fulfill the obligation of environmental protection.[1011]

Similarly, government at all levels by reason of the law undertakes to increase fiscal input in environmental protection and improvement, as well as the prevention and control of pollution and other public hazards.[1012]Furthermore, government strengthens environmental protection by encouraging the news media, non-governmental organisation and civil society groups to carry out the publicity of environmental

[1011] EP Law of China, Article 6.
[1012]Article 8.

protection laws, regulations andknowledge, so as to facilitate a favourable atmosphere. In the same vein, educational departments and schools have been mandated to incorporate environmental protectionknowledge into the curriculum of school education so as to cultivateenvironmental protection awareness among students, and to report cases of environmental violations.[1013]In other to advance the purpose of the lawof creating public awareness on environmental protection against pollution, June 5th of every year has been designated environmental day.[1014]

5.10 **Analysis**:

An understanding of the above analysis of the EIA laws of the United States of America; England and Wales; South Africa; Kenya; Japan and China respectively would discover that many countries all over the world are agreed to the necessity of carrying out an environmental impact assessment with respect to projects capable of causing adverse environmental effects. The main aim is usually to forestall or mitigate any imminent or foreseeable environmental impact. A further comparative analysis of some points is hereunder considered. The comparative analysis of the laws selected centered on: applicable legal framework, procedural requirements, public participation provisions, minimum type or content requirement of an EIA, access to information on the EIA process, right of citizens to apply for administrative or judicial review and enforcement of EIA provisions.

a) Preparation and payment for the environmental impact assessment report (EIA): All the countries under consideration are agreed to the fact that it is the project proponent (developer) with or without the assistance of accredited consultant (contractor) that prepares the EIA. This is provided for in Nigeria by section 17 of the EIA Act as follows:

> 17(1) The Agency may delegate any part of the screening or 'mandatory study of a project', including the preparation of the screening report or mandatory study report…

[1013]Article 9.
[1014]Article 12.

Similarly**,** it is the project proponent that bears the cost of the EIA. This aspect of bearing the cost is a fact that makes many private people shy away from submitting their projects or activities for environmental impact assessment for fear of incurring huge financial cost. For this reason, it is viewed that a model which provides for the government or its agency to bear the full cost of the EIA process is recommended. In the alternative, the government could possibly bear the cost of the process with the proponent. This is better than allowing the proponent to bear all the cost alone.

b) Requirement of financial assurance or bond: Like Nigeria, most of the countries considered require financial assurance or bond as security which would be forfeited, where any adverse impacts results in the EIA process. However, countries like United States of America and Japan have no similar provision on requirement of financial assurance or bond. The Nigerian EIA Act makes the requirement of security bond mandatory by the use of the term 'shall'.[1015]Notably, whilst the requirement of security bond is reassuring to the regulatory authorities, it places more financial burden on the project proponent. It is suggested that the cost of the security bond should be borne by both the regulatory authority and project proponent. In the alternative, the practice in Kenya is preferable as requirement of financial assurance varies with the proponent and type of project embarked upon.

(c) Interdisciplinary Team: Although the requirement of an interdisciplinary team in the EIA process in Nigeria is commendable, it is opined that what is more important is the accreditation, competence and expertise of those appointed to constitute the interdisciplinary team. This is particularly so because accredited environmental practitioners would have been sufficient to conduct an impact assessment of a project.

[1015]The position of the Nigerian law is now clear beyond dispute that when legislation employs the word 'shall'it is either interpreted as mandatory or as directory. When interpreted as mandatory it is imperative but that is not the case when it is interpreted to be directory. See: *IfezuevMbadugha*(1984) 1 SCNLR 427; (1984) 5 SC 79; (1984) NSCC (VOL. 15) 314 at 331 – 332;*AbubakarvNasamu*(No. 2) [2012] 17 NWLR (Pt. 1330) 523, at 577, D – E where the Supreme Court held as follows: 'Where a statute has prescribed the mode of performing an act, only that mode of performing the act competently is contemplated otherwise the act is a nullity'.

(d) Citizen's right to apply for administrative review of final decision on EIA report: In this regard, the EIA Regulations of England and Wales require that an EIA application determined by a local planning authority shall make available information regarding the right to challenge the validity of the decision and the procedures for doing so.[1016] In keeping with the foregoing provisions, the EIA laws of South Africa, Kenyaand China make elaborate specific provisions for citizens to either appeal for administrative reviews of action taken in respect of an EIA report, or for judicial review or redress over any actions against public or individual interests regarding the outcome of an EIA or EIS as the case may be. Specifically in South Africa, any person or group of persons may institute an action in court to enforce or seek appropriate reliefs in respect of breach of EIA law reports and environmental laws in general. The difference in Kenya is that while a citizen may apply to the High Court for the enforcement of an EIA permit against a project proponent, he cannot enforce the outcome of the EIA as contained in the EIA report. It is therefore suggested for all countries that inclusion of the provisions that afford proponents or citizens opportunity to apply for both administrative and judicial reviews of final decision of regulatory authorities on an EIA report is recommended.

(e) Enforceability of EIA: Specifically in China, where an EIA report is dishonestly or fraudulently prepared, the proponent, project contractor, environmental consultant, as well as the staff of the regulatory agency that submitted and approved the EIA report would be liable to punishment according to law. The legal responsibility is personal. For a staff of the authorising agency, he would be investigated and where found culpable, given administrative sanctions in addition to criminal prosecution and liability. In England and Wales, both the planning authority and Secretary of State for Communities and Local Government can issue enforcement notice on a developer in breach of planning

[1016]Regulation 24 (c)(iv), The Town and Country Planning (Environmental Impact Assessment) England and Wales Regulations, 2011.

or EIA conditions.[1017] In Nigeria, by virtue of section 37(5) of the EIA Act, a summons on witness to testify before a review panel for the purpose of enforcement is usually made by the summons or order of the Federal High Court. Furthermore, a Court of competent jurisdiction[1018] would usually on the application of the regulatory authority issue an injunction against a proponent who has violated or is in violation of a prohibition order until the assessment of the environmental impacts or mitigation of same is carried out. The procedure of involving the Court gives the process of enforcement of EIA in Nigeria and South Africa judicial backing. This is unlike the other countries under review, where enforcement procedure involves only the enforcement agency – not necessarily the Court. South Africa is however more preferred because it confers jurisdiction on the Magistrates Courts on environmental impacts enforcement matters, unlike Nigeria where such jurisdiction appears to be conferred only on the Federal High Courts.Furthermore, in Nigeria involving Courts in the enforcement of the environmental impact assessment process is capable of causing unnecessary delays. This is because of the dilatory or very slow nature of the Nigerian judicial system in terms of determination of suits. Consequently, establishment of a specialised court for the fast tracking of cases or applications bordering on the enforcement of environmental impact assessment laws is recommended.

Another worry about matters bordering on enforcement of EIA processes is that NESREA wrongly initiates judicial proceedings against an erring proponent in a bid to enforce compliance. For example, there is a live issue where the proponent of the re-construction of a public market is the State government. This means that the market was already in existence, but the government awarded a company the contract to upgrade or modify the market facilities. Although the company had executed the contract and demobilized from the construction site, but for non-compliance with the EIA processes,

[1017]Ss. 30, EIA Regulations, and 172, 173, and 182 of the Town and Country Planning Act, 1990.
[1018] Court of competent jurisdiction in this case is the Federal High Court. See Constitution of the Federal Republic of Nigeria, 1999 (as amended), s.251(1)(r).

NESREA instituted a legal action against the company at the Federal High Court, Port Harcourt Judicial Division.[1019] While the judgment in the said action is awaited, the pertinent question is: who should the regulatory authority proceed after, for the purpose of enforcing compliance with the EIA?

It is submitted that where the construction company is still at the construction site and during the reconstruction or at least before demobilising from site, NESREA may proceed after the said company. Where the company has demobilized from site and handed over the completed project to the proponent for commissioning, it is the said proponent that NESREA must go after; for the purpose of any contravention of the EIA laws and liability to payment of the penalties for non-compliance with the EIA process.

(f) Penalties and Compensations: In the United States of America, the establishment of the SuperFund under the CERCLA is novel. The recognition of the United States Environmental Protection Agency (USEPA) as one channel of authority through which every issue of environmental protection is addressed;particularly where theagency directly involved with the issue is incapable of handling it is commendable. The Administrator of USEPA liaises with the Attorney-General to publish Guidelines to give effect to the purpose of the agencies. The penalty for pollution in the United States is very punitive. However, where a polluter is unable to pay because of financial estate, the President may grant such polluter wavers and the cost borne by the State from the SuperFund funded from various taxes from activities capable of causing any environmental degradation. The essence of this Presidential discretion is to severely punish those who have the means, who pollute to actually pay heavily to mitigate the adverse effects of their activities on the environment. In other words, the rich are made to bear the grunt of those with low means at ensuring environmental protection for all.

In England, the provision of the law for compensation of persons whose property would be adversely affected both in content and value is taken very seriously, as the

[1019] *FRN v O. K. Isokariari& Sons (Nig.) Ltd* CHARGE NO: PHC/PH/11^{C}/2016.

project or development activity is halted or not commenced until the determined compensation has been paid by the developer to the claimant, albeit to the satisfaction of the Secretary of State. Similarly, a developer is entitled to a refund of his expense over any development on land, over which the government has acquired interest for public purpose. In Nigeria, while the penalty for environmental impacts assessments and other environmental violations is grossly inadequate, the issue of payment of compensation to victims of such environmental violations is treated with levity as there are no specific statutory provisions on them. Consequently, compensation issues are hardly considered, except however in rare cases where the court awarded damages to a deserving litigant who sought for redress therefrom.

(g) Protection of Whistleblowers: The South African law is highly commendable for the protection of whistleblowers who act in good faith to report incidents of violations of environmental impact assessment in particular and environmental law in generalto the appropriate authorities. Also the compensation of informants whose report or evidence leads to conviction or recovery of specific sum with a sum not more than one-fourth of the sum recovered is encouraging. This protection is applicable to staff of an institution who reports the environmental violations of such institutions.

CHAPTER SIX:

CASE STUDY OF SOME SALIENT DECISIONS ON ENVIRONMENTAL IMPACTS AND INSTITUTIONS

6.1 Principle ofEnvironmental Impacts Assessment Litigation:

In order to avoid possible short cuts in enforcing environmental laws, the judiciary in discharging its core duty of interpretation of law drives the process of judicial enforcement of environmental laws and regulations. The court does this when it determines environmental litigation, hinged generally on environmental impacts assessment rights;[1020] whichcan take many forms, including: civil actions based on tort, contract or property law, criminal prosecutions, public interest litigation, or enforcement of fundamental rights.[1021]Specifically, litigation underscores the cardinal principle of fair hearing[1022]captured in two Latin Maxims: *audialterempartem* and *nemojudex in causasua*, meaning hear the cases of both sides and that no man should be a judge in his own cause or a case in which he is involved respectively.[1023]

The aim of environmental impacts assessment litigation is to secure award of compensation[1024] to victims of adverse environmental impacts, most of which are caused by non-compliance with environmental law generally and in particular environmental

[1020] For example, in oil spill cases, the right to fishery in tidal water is recognized in law and once proved the claimant is entitled to damages. *ELF Nigeria limited v Sillo& Anor* [1994] 6 NWLR (Pt. 350) 258; *Adeshina v Lemour* (1965) 1 All NLR 233.

[1021] MT Ladan Judicial Approach to Environmental Litigation in Nigeria, a paper presented at a 4 - day Judicial Training Workshop on Environmental Law in Nigeria organized by the National Judicial Institute, Abuja, at Merit House Abuja on 5 - 9 February, 2007, p. 3.

[1022] Fair hearing also contemplates the right of access to the courts of law, as well as right to choice of counsel. Thus, parties in litigation have the right to brief counsel of their own choice. Similarly, failure to serve hearing notice is an affront to fair hearing. *Tubonemi v Dikibo* [2006] 5 NWLR (Pt. 974) 565, at 587, paragraphs F – H; Constitution of the Federal Republic of Nigeria, 1999 (as amended) s. 36; African Charter on Human and Peoples Rights, Art. 7.

[1023] T Francis Get Back Your Rights, A New Manual on Human Rights (Port Harcourt, Pearl Publishers: 2012) p. 34.

[1024] Apart from compensation, some environmental law provides for strict civil liability. For example s. 12 of the Harmful Waste Act imposes civil liability for depositing, dumping or importing of harmful waste against the person who did so, except where the damage was due wholly to the fault of the person who suffered it or by a person who voluntarily accepted the risk thereof. Similar provisions are also found in the Petroleum Act- paragraph 36 of schedule 1 to the Petroleum Act, and Oil Pipelines Act – s.11(5). MT Ladan*supra*, pp. 4 and 5.

impact assessment. Notably, Nigerian Mineral and Mining Act, 2007[1025] covers this aspect of payment of compensation for violation of certain environmental rights, including compensations for:

a) revocation of a certificate of occupancy by the Governor as a result of the mining lease;
b) any disturbance of the surface rights of the owner or occupier and any damage done to the surface of the land on which the exploration or mining, is being or has been carried;
c) any crop, economic tree, building or work damaged, removed or destroyed by the holder of the mining title or by any of its agents servants;
d) damage, removal or destruction of the crop, economic tree, building or work.
e) damage to land pollution of any source of water, used for domestic and other purposes.

The importance of payment of compensation is underscored by the fact that it is not only assessed by a licensed government valuer, it is also implied and where the mining lease holder fails to pay the assessed compensation after 6 months of the grant of the licence, the licence shall be suspended until the compensation is paid.[1026]Another aspect of compensation relates to community development agreement, which constitutes part of the social corporate responsibility of the project proponent, albeit in tandem with environmental obligations of mitigating any adverse impacts resulting from the project or undertaking.[1027]For example, prior to the commencement of any development activity within a community, the project shall be executed with due consideration to a Community Development Agreement or other such agreement that will ensure the transfer of some social and economic benefits to the community, including scholarship awards, apprenticeship, agricultural product marketing, technical training, and employment opportunities for indigenes of the community. Other projects considered in a community development agreement relate to contributory support for other community services such as: roads, water and power projects.

[1025]Nigerian Minerals and Mining Act, 2007, ss. 104, 107, 113 and 125.
[1026]*Ibid*, ss. 108, 109 and 110.
[1027] *Ibid*, ss. 116 – 118.

In terms with modern realities, Nigerian Courts are becoming liberal and copying foreign jurisdictions in awarding compensation against acts that resulted in environmental degradation. This can be gleaned from the decision in *SPDC Ltd v Farah*[1028] where the Court of Appeal, per Onalaja JCA (as he then was) at page 198, paragraphs D – E held as follows:

> There is a universal phenomenon of oil blow out in oil industry as recorded in Alaska, United States of America over the Exxon oil spillage saga and more recently in the Republic of Russia. The judgment of my learned brother is a guide and an appraisal of the law about oil spillage or blowout in Nigeria as at now. It will serve as beacon light to Oil Mineral Producing Areas of Nigeria as to the certainty of the legal rights of the citizens in claims for compensation arising from oil spillage or blow out. It is also a guidance to the oil companies in settlement of compensation arising from oil spillage, or blow out.

Accordingly, in order to deter prospective violators of environmental impacts assessment laws and polluters, the extent of damages awarded against them ought to be punitive. This is predicated on the belief that no matter how much money a polluter or operator who degrades the environment pays to the victim, the restoration[1029] of the environment to its original or natural state is usually very difficult. This is because much of the damage caused may be irreversible. Thus, if Nigeria is to promote ethical values and respect for its communities and their environment, its judiciary must give effect to laws, policies and principles whichguide and encourage payment of compensation to victims of adverse environmental impacts; as well as re-orientate companies in any of the sectors of the economy to ensure safety of their operations with respect to human rights and environmental protection. Nigeria also needs to reappraise its framework for compensation on environmental restoration.[1030]Another burning issue relates to court which should handle environmental impacts assessment matters.

6.2 **Jurisdiction of Court on Environmental Impacts Assessment, Oil Spill Pollution, Mining and Manufacturing in Nigeria**:

[1028][1995] 3 NWLR (Pt. 382) 148.

[1029] Restoration or reclamation of a degraded environment is the duty of the project proponent. Nigerian Minerals and Mining Act, 2007, ss. 114 and 115.

[1030] O Fagbohun, *The Law of Oil Pollution and Environmental Restoration: A Comparative Review* (Yaba Lagos: Odade Publishers, 2010) p. 7.

On the court that has jurisdiction over actions bordering on compliance with the EIA Act and other extant environmental laws, it is important to state that the EIA Act did not define the term court. Consequently, it did not state the court which has jurisdiction over actions instituted in court pursuant to the provisions of the Act. However, the court vested with jurisdiction seems to have beenimpliedly addressed by the EIA Act, albeit in unclear terms. It would appear that the Court vested with such jurisdiction is the Federal High Court. This is deducible from the provisions of section 37(5) of the EIA Act; to the effect that any summons issued or order made pursuant to assessment of a project may, for the purposes of enforcement, be made a summons or order of the Federal High Court by following the usual practice and procedure. Consequently, reference to court of competent jurisdiction unarguably refers to the Federal High Court. The reference is contained in section 52(1) of the Act to the effect that a court of competent jurisdiction can issue injunction or order any person to refrain from doing any act that would assist the proponent to evade compliance with the assessment of the environmental effects of its project.

With due deference, the NESREA Act[1031] which establishes the Agency[1032] saddled with the responsibility of administering and enforcing the provisions of the EIA Act, provides that reference to Court in the NESREA Act means Federal or State High Court.[1033] Thus, an officer of the Agency may, in the course of his duty, at any reasonable time enter and search with a warrant issued by a court, and obtain an order of a court to suspend activities, seal and close down premises including land, vehicle, tent, vessel, floating craft, any inland water or other structure.[1034] Furthermore, subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which relates to the power of the Attorney-General of the Federation to

[1031] 2007.
[1032]That is National Environmental Standards and Regulations Enforcement Agency.
[1033]NESREA Act, s. 37.
[1034]NESREA Act, s. 30 (1) (a) and (g).

institute, continue or discontinue criminal proceedings against any person in a court of law, an officer of the Agency may, with the consent of the Attorney-General of the Federation, conduct criminal proceedings in respect of offences under the NESREA Act or Regulations made pursuant to it in a court of law.[1035]

From the foregoing, it appears that an officer of NESREA with respect to enforcing the provisions of the EIA Act may do so through either the Federal or State High Court. This implies that actions bordering on environmental impact assessment may be instituted either at the Federal or State High Court. It is however viewed that it is better to institute such actions at the Federal High Court. This is because, the EIA Act itself seemingly vests jurisdiction of matters relating to summons made under it in the Federal High Court. If this is the case, it follows that other actions relating to the enforcement of the provisions of the Act can validly be instituted at the Federal High Court. This point is given more support to the effect that Federal High Court has jurisdiction in actions involving federal agencies.

In *Onuorah v Kaduna Refining & Petrochemical Co Ltd*[1036]the Supreme Court observed that a careful reading of paragraphs (q) (r) and (s) of section 251 of the Constitution reveals that the intention of the lawmakers was to take away from the jurisdiction of the State High Court and confer same exclusively on the Federal High Court actions in which the Federal Government or any of its agencies is a party.[1037]It was further held that both parties and the subject matter of litigation are to be considered in the determination of jurisdiction. Thus, even though a federal agency was sued at the

[1035]NESREA Act, s. 32(3) and (4).
[1036][2005] All FWLR (Pt. 256) 1356, at 1368, C – E.
[1037] Thus, as held in *NEPA v Edegbero*[2003] FWLR (Pt. 139) 1556; [2002] 18 NWLR (Pt. 798) 79 at 95 E – F; *F.H.A. v John Shoy Int'l Ltd* [2004] ALL FWLR (Pt. 214) 132 at 143;*Oyakhire v Jen* [2000] FWLR (Pt. 20) 699 at 713, E; a State High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action.Note however that the exclusive jurisdiction given to the Federal High Court does not extend to any suit which has nothing to do with the administration or management and control of the agency or where there is no claim for declaration or injunction against the agency, *NNPC v Okwor*[1998] 7 NWLR (Pt. 559) 637 at 650 F – H.

Federal High Court, the Court would lack jurisdiction where the action involved issue of contract, which falls within the residual jurisdiction of the State High Court.

It is also opined that where the action is instituted by an officer of an environmental agency based on the violation of a State law made pursuant to or to give effect to the provisions of environmental impact assessment law, it may validly be instituted in a State High Court.[1038] In other words, pursuant to the meaning of Court in the NESREA Act, an officer of an environmental agency may validly institute actions in a State High Court against the violations of environmental impact assessment laws of that State.

With regard to jurisdiction on oil pollution cases, mining and manufacturing, the Supreme Court in *SPDC Ltd v Isaiah &Ors*[1039]held that the Federal High Court has exclusive jurisdiction on matters relating to environmental degradation and pollution arising from oil spillages; mining, and manufacturing activities. However, it is viewed that there is the need for both the Federal and State High Courts to have concurrent jurisdiction on all matters relating to the foregoing activities, as well as all matters relating to environmental impact assessment and standards. This view is borne out of the analysis of some case laws. For example, the decision of the Court of Appeal in *SPDC LtdvIsaiah,*[1040]where damage was caused to Shell's pipeline and Shell's act while fixing or repairing an indented portion of a pipeline resulted in the accident that caused damage to the Claimants' property; as a result of failure of the Defendant's company to construct an oil trap.

[1038] This point is borne out of the reasoning that contrary to the conclusions of many, a police officer can also be sued in a State High Court, where such officer is seen as the officer of the State government. Thus, a police officer in Nigeria is capable of enjoying a dual status. When he is complying with the directions of the Governor of a State with respect to maintaining security of public safety and public order within the State he is an agent of the State and not an agent of the Federal Government even though he is a servant of the Federal Government. On the other hand, where he is complying with the directions of the President in maintaining and securing public safety and public order issued to the Inspector General of Police then he is acting as an agent of the Federal Government. *Okoroma v UBA* [1999] 1 NWLR (587) 359, at 387 – 388. Similarly, where the environmental impact assessment law is domesticated by a particular State, its State High Court would definitely have jurisdiction to entertain actions bordering on such law, except otherwise enacted or specifically excluded.

[1039][2001] 11 NWLR (Pt. 723) 168; [2001] 5 SC (Pt. 11) 1.

[1040][1997] 6 NWLR (Pt. 508) 236.

At the court of first instance, the issue of jurisdiction was contended by the defendant but it was overruled by the trial judge who commenced trial and awarded compensation to the Claimant against the Defendant. The Defendant appealed to the Court of Appeal to determine the issue of jurisdiction; which if decided in its favour would have rendered the trial court's verdict a nullity. Dismissing the appeal, the Court of Appeal held that sections 19 and 20 of the Oil and Pipelines Act[1041] expressly confer jurisdiction in cases of oil spillage or leakage from pipelines on the Magistrates Courts or High Courts in the area where the oil leakage or spillage occurs.[1042]

On jurisdiction of State High Court to determine actions arising from mining operations, it was held thus:

> Since the Federal High Court (Amendment) Decree No. 60 of 1991 which places actions arising from mining operations causing pollution within the exclusive competence of the Federal High Court has also been suspended by the Federal High Court (Amendment) Decree No. 16 of 1992 which came into force on 1st January 1992, it follows that the jurisdiction of State High Court to try such matters has been restored.[1043]

On effect of Constitution (Suspension and Modification) Decree No. 107 of 1993 on jurisdiction of State High Courts to determine oil spill matters, it was held:

> The Constitution (Suspension and Modification) Decree No. 107 of 1993 does not affect the jurisdiction of the State High Court to adjudicate on oil spill matters. In the instant case, the Decree is inapplicable because the subject matter of the claim did not arise from 'mines and minerals, oil fields, geological surveys and natural gas'. The matter arose from the Appellant's[1044] oil pipelines into the Respondents' swampland and farmlands.[1045]

Surprisingly, a year later, the same Court of Appeal deviated from the decision in *SPDC v Isaiah*,[1046] and held in *Barry v Eric*,[1047] that the case in which the seismic activities of oil prospecting Defendant caused the migration of bees in the Claimant's bee farm could only be entertained by the Federal High Court. Following this judgement, the Court of Appeal in applying S.30 (1)(o) of the 1979 Constitution as amended by the

[1041] Cap 338, LFN 1990, now Cap O 7, LFN, 2004.
[1042] Per Katsina-Alu, JCA (as he then was), 246, paragraphs E – F.
[1043] *Ibid*, 246 – 247, paragraphs H – B.
[1044] ie Shell Petroleum Development Company Ltd.
[1045] *Supra*, at 247, paragraphs B – C.
[1046] *Supra*.
[1047] [1998] 8NWLR (Pt. 562) 404.

Constitution (Suspension and Modification) Decree No. 107 of 1993,[1048] held in *SPDC v Maxon&Ors,*[1049]that the Federal High Court had exclusive jurisdiction in adjudicating on matters 'arising from' or 'pertaining to' or 'connected with' mines, minerals, oil and gas. This decision invariably stripped State High Courts of jurisdiction on matters of oil spill as against the previous decision that State High Courts had jurisdiction to entertain same.[1050]Upholding this view of Federal High Court's exclusive jurisdiction, the Court of Appeal relying on the provision of S. 251 (1) (n) of the Constitution of the Federal Republic of Nigeria, 1979 stated inter alia:

> The Constitution is the basic Law of the land. All institutions derive their authority and validity from it. Thus, no court may forage into an area that is not provided by the Constitution or any other law enacted by the National Assembly. Hence the scope of authority, jurisdiction and competence of the High Court which is a creation of the Constitution is determined by the Constitution. However, where there is no express provision of limitational powers, then High Court may well venture or assume original jurisdiction in that area.[1051]

The outcome of the above decision is that any unsavoury result which is actionable in consequence of the activities of the companies engaged in operation and relating to prospection in oil, mines, minerals, gas exploration and related geophysical works or activities comes within the exclusive jurisdiction of the Federal High Court. In this regard, pollution caused by oil spillage comes within the exclusive jurisdiction of the Federal High Court.[1052] This conclusion is clear not only from the enactment of section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), but also from the Supreme Court's interpretation of section 230 (1) (o) of the Constitution (Suspension and Modification) Decree No. 107 of 1993. Thus, in the case of *SPDC v Isaiah &Ors,*[1053]in 2001, while considering the issues of jurisdiction and compensation, the Supreme Court laid to rest the issue of exclusive jurisdiction on matters relating to oil spillages generally by giving effect to the provision of section 230 (1) (o) of the

[1048]Now S. 251(1) (n) of the 1999 Constitution Cap C23, LFN 2004 (as amended) in 2011.
[1049][2001] 9 NWLR (Pt. 719) 541.
[1050]See Court of Appeal decision of *SPDC v. Isaiahsupra*.
[1051]*Barry v Eric,supra* applied. See also*Rossek v A.C.B. Ltd* [1998] 8NWLR (Pt. 312) 382; 553, paras C – E.
[1052]*Ibid,*per Pat-Acholonu, JCA (as he then was) 554 – 555, paragraphs A – F.
[1053][2001] 11NWLR (Pt. 723) 168; [2001] 5 SC (Pt. 11) 1.

Constitution (Suspension and Modification) Decree No. 107 of 1993.[1054] The said section provides as follows:

> Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –
> (n) mines and minerals (including oil fields, oil mining, geological surveys and natural gas);

The above section was interpreted to mean that oil spillage from an oil pipeline was a thing associated with, relating to, arising from or ancillary to mines and minerals including oil fields, oil mining, geological surveys and natural gas.[1055]Apparently, this interpretation lent credence to the provisions of the Petroleum Act,[1056] Oil Pipelines Act,[1057] and Minerals and Mining Act[1058] to safely arrive at the conclusion that definition of oil or mineral oil refers to petroleum, which said petroleum is usually transported through a particular means, such as oil pipelines.[1059]From an understanding of the foregoing enactments, the Supreme Court held conclusively in *SPDC v Isaiah* that:

> In establishing whether the construction and maintenance of an oil pipeline is part of mining operations, it is relevant to refer to the practice of the oil prospecting licence holders during mining operations. They have been described in the Petroleum Act 1960 and Oil Pipelines Act 1956. If petroleum is

[1054] That is now S. 251 (1) (n) of the 1999 Constitution Cap C23, LFN 2004 (as amended).
[1055]*Supra*, at 179, paragraphs C – E.
[1056] S. 15 of the Act, Cap P10 LFN, 2004. By S.15, petroleum means **mineral oil** (or any related hydrocarbon) or natural gas as it exists in its natural state in strata, and **does not include coal or bituminous shales or other stratified deposits** from which oil can be extracted by destructive distillation. (Emphasis added).
[1057] Enactment Section, Oil Pipelines Act, Cap O 7 LFN, 2004. It provides: 'An Act to make provision for licences to be granted for the establishment and maintenance of pipelines incidental and supplementary to oilfields and **oil mining** and for purposes ancillary to such pipelines' (Emphasis mine).
[1058] S. 164, Nigerian Minerals and Mining Act, 2007. It defines minerals or mineral resources to mean any substance, whether in solid, liquid, or gaseous form occurring in or on the earth, formed by or subjected to geological processes including occurrences or deposits of rocks, coal, coal bed gases, bituminous shales, tar sands, any substances that nay be extracted from coal, shale, or tar sands, mineral water, and mineral components in tailings and waste piles, **but with the exclusion of petroleum** and waters without mineral content. (Emphasis added).
[1059] S. 2 and Paragraph 7 of the First Schedule to the Act, Cap P10 LFN, 2004. Dealing on **Oil** exploration licences, **oil** prospecting licences and **oil** mining leases, S.2 of the Petroleum Act states as follows: (1) Subject to this Act, the Minister may grant- (a) a licence, to be known as an oil exploration licence, **to explore for petroleum**; (b) a licence, to be known as an oil prospecting licence, **to prospect for petroleum**; and (c) a lease, to be known as an oil mining lease, **to search for, win, work, carry away and dispose of petroleum.** (Emphasis mine). Paragraphs 7 and 8 to the First Schedule of the Petroleum Act provides thus: '7. The holder of an oil prospecting licence may carry away and dispose of petroleum won during prospecting operations, subject to the fulfilment of obligations imposed upon him by or under this Act (including any special terms or conditions imposed under paragraph 34 of this Schedule) or by the Petroleum Profits Tax Act or any other law imposing taxation in respect of petroleum'.
8. An oil mining lease may be granted only to the holder of an oil prospecting licence...

> discovered through the approved mining operations, arrangement is made by the oil prospecting licence holder, which struck the oil, to evacuate the oil from the oil well to an oil terminal. This is done either through a pipeline or a tanker. The pipeline is constructed and maintained by the Oil Company which transports the oil from the oil-well to the oil terminal.[1060]

In light of the above, the construction and maintenance of oil pipelines is part of oil mining operations.

The issue of exclusive jurisdiction over petroleum issues having been settled by the Apex Court; it was no more news that the Court of Appeal in 2002 gave effect to the precedent in deciding a similar case, *SPDC v H.B. Fishermen.*[1061] In this case, the Respondent sued the Appellant, claiming ₦162, 800, 000.00 as special and general damages as a result of crude oil spill from the Appellant's crude oil well and other oil installations, which extensively polluted the Respondents' fish ponds, fishing nets, and the creeks and rivers where the Respondents carried on its large scale commercial and modern fishing and fish farming.

The trial court in its judgement found the Appellants liable and awarded to the Respondents the total sum of ₦21, 995, 000.00 special and general damages. Being dissatisfied, the Appellant appealed against the judgement to the Court of Appeal. The issue which was whether the trial court was right in holding that it is the State High Court, and not the Federal High Court that has jurisdiction to try and determine the claims before it, particularly having regard to the provisions of the Constitution (Suspension and Modification) Decree No. 107 of 1993, now S. 251 (1) (n) of the 1999 Constitution (as amended). It was held that the State High Court lacked the requisite jurisdiction to determine the suit. (Underlining is for emphasis).[1062] In the words of the Court of Appeal:

[1060] [2001] *supra*(Underlining is for emphasis).
[1061][2002] 4 NWLR (Pt. 758) 505.
[1062]*A.G. Federation v Guardian Newspapers Ltd.* [1999] 9NWLR (Pt. 618) 181; *Alese v Aladetuyi* [1995] 6 NWLR (Pt. 403) 527relied upon.

> A plaintiff may have a very good cause of action supported by existing law, but if he takes his case to a court which has no jurisdiction over the subject matter or the cause of action, he cannot ventilate his claims before that court.[1063]
> Even if parties are before a court that has jurisdiction and a new law comes into existence which withdraws the jurisdiction of a court from hearing the case, that court automatically ceases to have jurisdiction to continue with the case.[1064]

Furthermore in *Seismograph Services (Nig) Ltd v Oshile*,[1065]the Court of Appeal upturned a decision which was in favour of the Respondents against the Appellant, whose seismic activities destroyed, desecrated and polluted the Respondents' crops, farmland, juju shrines, two private roads among others. The reason stated for the upturning of the Respondents' victory was only because the trial court was a State High Court and that it lacked jurisdiction to entertain the matter. Accordingly, a High Court of a State lacks the jurisdiction to hear and determine a matter connected with or pertaining to mining, geological survey and natural gas; and once the jurisdiction of a court is ousted, it becomes immaterial that the trial court arrived at a just decision.[1066]

It is further submitted that the courts, armed with the law, have severally let oil spillers, polluters and at large environmental degraders off the hook of liability of paying compensation to victims of the pollution. These laws have in no mean way aided the courts to construe jurisdiction in favour of polluters once the action is not instituted at the Federal High Court.[1067] This is not withstanding that the mistake of filing the action in the court without jurisdiction was indeed that of counsel who ought to have known the court with jurisdiction on the matter. Thus, denying the merits of a case solely on lack of jurisdiction of the court in which the action was instituted is akin to visiting the mistake of counsel on the litigants. This ought not to be so.

[1063]Pages 514 – 515, paras. G – A, 517 – 518, paras. H – A.
[1064]*Ibid.*
[1065][2009] 16 NWLR (Pt. 1166) 158.
[1066]perNwosu – Iheme, JCA at page 167, C – F.
[1067] The precedent is the same even in the cases of *C.G.G. (Nig). Ltd v Ogu*[2005] 8 NWLR (Pt. 927) at 386 and *C.G.G. (Nig.) Ltd v Amaewhule*[2006] 3 NWLR (Pt. 967) 282, where damage caused to the respondents' cash and economic crops and trees, fish ponds, juju shrines and a farm house; and living houses respectively, resulted from the negligence of the appellants in carrying out its seismic survey works and operations. Not considering the hardship meted on the respondents, the Court held that the respondents should go home remediless because the High Court where they instituted the action lacked the jurisdiction to entertain same.

It is therefore opined that it will be in the interest of all Nigerians to amend S.251 (1) (n) of the Constitution, 1999 (as amended) in order to confer on both Federal and State High Courts concurrent jurisdiction to hear and determine any civil cause or matter pertaining to oil spillage or pollution, including environmental impacts assessment. Proximity or otherwise of a Federal or State High Court to the area where the pollution occurs should be a matter to be left at the choice of litigants.

This submission notwithstanding, it is also opined that lawyers must sit up and be abreast with the extant laws so as advise their clients on the appropriate court to file their cases. This is because once jurisdiction is gotten wrong; the entire judicial process no matter how well packaged, presented, conducted and argued will come to a nullity. Undoubtedly, if the counsel to the oil pollution victims in the cases considered were minded of the appropriate court conferred with exclusive jurisdiction on oil spill matters, the victories of the victims would have been sustained at the appellate courts.

6.3 **Payment of Compensation arising from Environmental Impacts Claims**:

On the issue of payment of compensation, the Supreme Court seems to have arrived at a decision by having recourse to the provisions of S. 11 (5) of the Oil Pipelines Act, which provides as follows:

> (5) The holder of a licence shall pay compensation –
> (a) to any person whose land or interest in land (whether or not it is land respect of which the licence has been granted) is injuriously affected by the exercise of the rights conferred by the licence, for any such injurious affection not otherwise made good; and
>
> (b) to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work structure or thing executed under the licence, for any such damage not otherwise made good; and
>
> (c) to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good.[1068]

[1068] Relevant also on the payment of compensations are ss. 104, 107, 113 and 125 of the Nigerian Minerals and Mining Act, 2007.

If the amount of the compensation is not agreed betweenthe claimant owner and the holder, it shall be fixed by a court in accordance with provisions of the law Act.

As regards the rights of victims over their land and interests, the court affirmed that it is intact. This point was well clarified in the case of *NNPC v Sele and Ors*,[1069]to the effect that owners of land adjoining, abutting or encompassing waterways are entitled not only to fish thereon, but also to settle or erect structures and even extract rent from others seeking to use the land. Thus, the Minerals Act does not in any way affect the common law right of a community to fish and do other lawful activities towards their sustenance. And if such right is violated, then such a community is entitled to compensation.[1070]

Accordingly, by reference to subsection (c) of section 11(5) of the Oil Pipelines Act quoted above, it is distilled and settled that compensation is payable to any person suffering damage (other than on account of his own default or on account of a malicious third person). In other words, compensation is payable to a Claimant/Plaintiff in respect of oil spillage, only if:

a) the damage was not on account of the Claimant's default;
b) the damage was not on account of malicious act of a third party;
c) the Defendant was negligent.

In the *SPDC v Isaiah*'s case, the Defendants/Appellants were held liable to the Claimants/Respondents because the damage to the Claimants property was caused by the Defendants (SPDC) while trying to fix the pipeline which resulted in the accident that caused the damage. In the words of the Apex Court: '...because of the Defendants' neglect to construct an oil pipe as they disconnected the damaged section of the said oil pipes for replacement, noxious crude oil commenced massive spillage into the plaintiffs' swampland.[1071]

[1069][2004] 5 NWLR (Pt. 866) 379.
[1070]At page 427, paras.D – H, per Muntaka-Coomassie JCA (as he then was). Also relevant are the cases of: *Braide v Adoki*(1931) 10 NLR 15, *Adeshina v Lemonu*(1965) 1 All NLR (Pt. 1) 233, and *Elf (Nig) Ltd v Sillo*(1994) 6 NWLR (Pt. 350) 258.
[1071]*Supra* [2001] at page 178, paragraphs E – H.

It can be concluded from the above viewthat although the Apex Court reversed SPDC v. Isaiah's on the issue of jurisdiction; payment of compensation to the victims of pollution was still upheld, because the spill occurred as a result of the negligence of the oil spillers' employees in fixing the pipelines.

In respect of compensation relating to petroleum issues, it would appear that the Oil Pipelines Act confers the Magistrates and High Courts with jurisdiction in the past.This is enacted by section 19 of the Oil Pipelines Act in the following terms:

> 19If there be any dispute as to whether any compensation is payable under any provision of this Act or if so as to the amount thereof, or as to the persons to whom such compensation should be paid, such dispute shall be determined by a station magistrate exercising civil jurisdiction in the area concerned if such magistrate has in respect of any other civil matter monetary jurisdiction of at least as much as the amount of compensation claimed and if there be no such magistrate by the High Court exercising jurisdiction in the area concerned and, notwithstanding the provisions of any other Act or law in respect of the decision of a magistrate in accordance with this section there shall be an appeal to the High Court of the State and in respect of a decision of the High Court of the State under this section, whether original or appellate, there shall be an appeal to the Court of Appeal:
> Provided that nothing in this Act shall be deemed to confer power upon a magistrate to exercise jurisdiction in a matter raising any issue as to the title to land or as to the title to any interest in land.

Today however, it would appear that the position of the law has changed as the Constitution confers the Federal High Court with exclusive jurisdiction over petroleum issues, which undoubtedly include award of compensation or damages.Consequently, the quoted provision of the Oil Pipelines Act is now at variance with the Constitution, the grundnorm and ultimate law of the land. Accordingly, there is need to activate these provisions of the Oil Pipelines Act which supports conferring concurrent jurisdiction on the High Court and Magistrates Courts on petroleum matters by reason of constitutional amendment. Otherwise, the Oil Pipelines provisions must be expunged to succumb to the overriding superiority of the Constitution; because separating jurisdiction to adjudicate from jurisdiction to award compensation is seemingly incoherent law and practice.

6.4 **Judicial Decisions on Claims predicated on Environmental Impact Assessment**:

With respect to litigation arising from environmental impacts assessment under the EIA Act, a *locusclassicus* is the case of *Gbemre v SPDC Ltd &Ors*,[1072]In this case, the Federal High Court granted leave to the Applicant to institute the action in representative capacity for himself and the people of Iwehereken community, Delta Sate Nigeria against Shell Nigeria, Nigerian National Petroleum Corporation (NNPC) and the Attorney-General of the Federation. The Applicants sought for an order enforcing their fundamental rights to life and human dignity as provided by sections 33 (1) and 34(1) of the 1999 Constitution of Nigeria, and supported by Articles 4, 16 and 24 of the African Charter on Human an Peoples' Right,[1073] including right to clean, poison-free, pollution-free and healthy environment.

In granting their reliefs, the Court declared that the actions of the Respondents (SPDC and NNPC) in continuing to flare gas in the course of their oil exploration and production activities in the Applicant's Community is a violation of their fundamental rights. Furthermore, the Court held that failure of the companies to carry out an Environmental Impact Assessment in the said community concerning the effects of their gas flaring activities is a clear violation of the EIA Act which has contributed to a further violation of the said environmental rights. Consequently, the Respondents/Polluters were restrained from further gas flaring and ordered to take immediate steps to stop further flaring of gas in the community. In the same vein, it was declared that the Attorney-General should ensure the speedy amendment, after due consultation with the Federal Executive Council, of the Associated Gas Re-Injection Act to be in line with the constitutional provisions on fundamental rights.[1074]

Although the Court made no award of damages, costs or compensation whatsoever, it is commendable that for the first time in the history of Nigeria, the

[1072] Unreported Suit No FHC/B/CS/53/05, Federal High Court, Benin judgment delivered on 14/11/2005. See: Nigeria: *Gbemre v Shell Petroleum Development Company Nigeria Limited and Others* (2005) AHRLR 151 (NgHC 2005) available at: http://www.chr.up.ac.za/index.php accessed 20 April, 2016.
[1073] Cap. A9, Laws of the Federation of Nigeria, 2004.
[1074]Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

judiciary pronounced on the citizens' right to a just environment, in tandem with the protection of their fundamental rights and the protection of the environment as enshrined in chapter IV and section 20 of the Constitution respectively.[1075] It is also viewed that this sense of application of fundamental rights to an environmental case for the first time in Nigeria, is consistent with the trend in other jurisdictions.[1076]

Arguably, it would appear that many of the environmental impacts actions litigated upon by many Nigerians relate mainly to torts. For example, in *SPDC (Nig) Ltd v Tiebo VII*[1077] the Court of Appeal upheld the judgment of the trial court that the plaintiffs' suit for negligence as well as under the Rule in *Rylands v Fletcher* for oil spillage was established against the defendant.[1078] Similarly, the Supreme Court upheld the plaintiff's action for nuisance due to noise, vibrations, dust and obstruction of the roads in an estate in *Adediran& Another v. Interland and Transport Ltd.*[1079]In *Isiaka Bello & Anor v Helios Tower Ltd,*[1080] the High Court, Ado Ekiti rendered judgment in favour of the plaintiffs for nuisance and wrongful interference against the siting of a telecommunications mast which generated so much noise and continuously disturbed their sleep and residential use of their property.

The trial court also upheld the application of NESREA Regulations over and above the NCC Act with respect to regulations of the telecommunications sector. However, the Court of Appeal[1081] set aside the judgment of the trial court, on the ground

[1075] This type of victory however, is Pyrrhic victory, against which Supreme Court has held that, 'Good law will not encourage a situation where a party in litigation will only return home with Pyrrhic victory which in reality is no victory at all'.*Inakoju v Adeleke*[2007] 1 S. C. (Pt.I) 1; [2007] 4 NWLR (Pt.1025) 423; [2007] All FWLR (Pt. 353) 31.

[1076] M Dean, 'The Revolution in Indian Environmental Jurisprudence' *Review Essay (2000) Asia Pacific Journal of Environmental Lawol.5, Issue 3, Kluwer law International* pp. 291-303 cited in MT Ladan, *supra* at p. 19.

[1077][1996] 4 NWLR (Pt. 445) 657 at page 681, paragraphs B – C.

[1078] Actions were also instituted for the tort of nuisance in *Siesmograph Service (Nigeria) Ltd v Ogbeni*(1976) 4 SC 85; *SPDC (Nig) Ltd v Otoko&Ors*[1990] 6 NWLR (Pt. 159) 693. However the decisions of the Court of Appeal in favour of damages for nuisance in these cases were upturned by the Supreme Court largely due to lack of *locus standi.*

[1079][1991] 9 NWLR (Pt. 241) 155, at 180, per Karibi-Whyte, JSC.

[1080]Unreported Suit No. HAD/159/2011, judgment delivered on 2/5/2014 by Ogunmoye, J. at State High Court, Ado Ekiti.

[1081]*Helios Tower Ltd v MrIsiaka Bello & Anor*(2015) LPELR-25206(CA), Appeal No.CA/EK/71/2014, judgment delivered on Tuesday, 14/7/2015.

that the 1st Respondent's allegation of nuisance was merely speculative as he never led evidence to show the actual damage or injury suffered due to the alleged nuisance. This was despite the fact that 1st Respondent led evidencethat theinstallation of the telecommunications mast violated or contravened the provisions of Standards for Telecommunications and Broadcast Facilities Regulations, 2011[1082] on the minimum set back of 10 meters from perimeter wall of residential premises. The Court of Appeal held that since the mast had been installed before 2011 when the Regulation for its installation was made, the law could not be said to have retrospective effect.

With due respect, the Court of Appeal ought to have ordered the relocation of the mast to comply with the Regulation, because it represents the dynamic realities that such installation could be hazardous to human health. This was very necessary to protect the public welfare and health of the people and to forestall the possibilities of any actual occurrence of the health hazards. Thus, in the public interest, the Court need not wait for actual occurrence of damage from the mast before it would award damage or enforce compliance with the extant Regulations.

Earlier, in *Umudje v Shell*,[1083] the Supreme Court held that it could draw necessary inference of negligence and thus applied the rule in *Rylands v Fletcher* to hold the defendant strictly liable without further proof. The Respondent's crude oil which was collected in a pit burrowed by and in control of the appellants escaped and thereby caused damage to the Claimants/Appellants' fishes and fishponds. The apex Court considered the crude oil waste as a non-natural user of land. This view of the Supreme Court is presumably predicated on the *res ipsa loquitur*[1084] principle. Thus, in *Royal Ade* v *National Oil*,[1085] it was held that the presumption of *res ipsa loquitur* is used to fasten

[1082] Regulations 5(4)(b)(c) and 11(5).
[1083](1975) 9-11 S.C. 155.
[1084] That is, the matter speaks for itself.
[1085][2004] 9 M.J.S.C 40, at 43.

liability on the defendant. Such presumption will aid victims of environmental pollution, who because of their limited knowledge cannot prove negligence.

Notably, the decision in *Gbemre*[1086]is unique for its direct relevance to the EIA Act, Associated Gas re-injection Act, protection of the environment and guarantee of same as fundamental right in Nigeria. However, more recently, in *Baytide (Nig.) Ltd v Mr. KayodeAderinokun&Ors,*[1087]an association of residents of an area in Lagos protested against the siting of a petrol station near their residential area for failure of the proponent to comply with the EIA Act, following which the proponent initiated the action against them as according to him he had got approval from the State government to build the petrol station. The High Court of Lagos entered judgment in favour of the defendant residents against the construction of a petrol station for which its proponent had not obtained the approval or permission required under the EIA Act and the Lagos State Environmental Agency Law.This was notwithstanding that the Claimant had got the certificate of occupancy and approval for the construction of the petrol station from the State Government.On appeal, the Court of Appeal in a unanimous decision upturned the judgment of the trial court.[1088]

The Court of Appeal held that construction of petrol service station is exempt from projects requiring mandatory environmental impact assessment and that environmental assessment required for petrol stations is not regulated under the EIA Act but the local law of the relevant Government Agency in fulfillment of the requirement of Section 2(1) and 14 of the EIA Act.[1089] Thus, where a State Government in the process of creating a new satellite town carries out the necessary survey and designates a particular area for petrol station, the assumption is that it had taken into consideration all the necessary environmental issues before designating the area for petrol station as required

[1086] Unreported Suit No FHC/B/CS/53/05, Federal High Court, Benin 14/11/2005; (2005) AHRLR 151
[1087] Suit No. LD/162/2004 judgment delivered on 18/3/2010, per Shitta-Bey J, at State High Court, Lagos.
[1088]*Baytide (Nig.) Ltd v Mr. KayodeAderinokun&Ors*(2013) LPELR – 19956 (CA).
[1089] The Court also indicated that environmental assessment is the same as a mandatory study, except that a mandatory study is an environmental assessment carried out pursuant to s. 17 of the EIA Act.

under Section 2(1) of the EIA Act. Having performed this duty at the time of the exercise of the power, there may be no need for further environmental assessment under the Act. All that would be necessary is to ensure that all necessary rules, regulations and conditions as stipulated under the relevant local laws as regards the construction of petrol stations are complied with. Thus having complied with environmental impact analysis as required under the Lagos State Town and Country Planning Regulation and Operational Guideline for special Applications (Approval Order), there was consequently no need for compliance with Section 7 of the EIA Act.

While commending the soundness of the foregoing decision with respect to stemming the conflict between States and Federal Agencies on issuance of approval for petrol stations; it is however submitted with due deference that, it is usually not true that before designating a place for petrol station, State governments have considered all necessary environmental issues regarding the petrol station. This is particularly so as the locations of petrol stations very close to residential buildings leave much to be desired, particularly during incidents of fire outbreak, some of which had taken many lives and left others homeless.

Also worthy of note is the fact that there appears to be scarcity of decided cases based primarily on environmental impact assessment that has been ventilated up to the apex court. Presently, most of the casesbordering on the enforcement of the EIA Act are being ventilated by government agencies, apparently for failure of the violating companies to pay penalty for failure to comply with the extantlaws on environmental impact assessment, and nothing more.[1090]For example, as between the agency to issue a project proponent with an environmental impact statement (EIS) or EIA certificate, it was

[1090]Worse still, the Attorney-General of the Federation is yet to give effect to the declaratory order of the court in *Gbemre's* case mandating him to ensure the speedy amendment (after due consultation with the Federal Executive Council), the Associated Gas Re-Injection Act to be in tandem with the provisions of chapter IV of the Constitution on Fundamental Rights. For failure of its implementation, this victory won at great cost to the Claimants is tantamount to a defeat. This refers to as Pyrrhic victory, a situation described by the Supreme Court as bad law; where a party in litigation will only return home with Pyrrhic victory which in reality is no victory at all. Strictly, courts of law ought not to give orders in vain. *Inakoju v Adeleke*[2007] 4 NWLR (Pt.1025) 423; [2007] All FWLR (Pt. 353) 31.

contended in *NESREA v Helios Towers*[1091] *& Anor,* that it is within the contemplation of the EIA Act that NESREA has the authority to issue a telecom company an EIA permit.

NESREA instituted the action against the telecom operator and the Kaduna State Environmental Protection Agency (KEPA) seeking *inter alia* the determination of whether it was within the contemplation of the EIA Act, for KEPA to issue an EIA permit to the telecom company and that KEPA acted *ultra vires* by issuing the EIA permit to the company. In other words, NESREA sued the telecom company for submitting to KEPA which it said acted *ultra vires* the EIA Act by issuing EIA permit to the telecom operator for mast installation within the State. The trial court, per Shuaibu, J held that it is NESREA that is empowered to issue such permit irrespective of the fact that it is within a State. On appeal, the Court of Appeal[1092] upholding the trial court's decision held inter alia that:

> NESREA is the statutory body established by the National Assembly to replace the Federal Environmental Protection Agency [FEPA] and the body entrusted with the enforcement of environmental standards and regulations in Nigeria. It is therefore the body that is vested with powers to issue environmental impact assessment certificate.

Similarly, an association of telecom operators had in 2004 instituted an action against Lagos State Government from regulating installation of telecommunication mast towers in Lagos. In *Registered Trustee of Association of Licensed Telecommunication Operators of Nigeria & 6 Ors v Lagos State Government & 4 Ors*,[1093] the plaintiffs challenged the rights of the Lagos State government to impose regulations on telecom operators; and prayed for a declaration that the Lagos State Installation of Masts Regulation Agency (LASIMRA) law was unconstitutional, null and void. It was argued that the enforcement of the law by the demolition of telecommunication structures will

[1091] Contractor for MTN telecommunications company.

[1092] Unreported Appeal No: CA/K/123/2010, lead judgment delivered on the 10/12/2014 by Hon. Justice AminaWambai at the Court of Appeal, Kaduna Division. Reported in THISDAY of 3rd March, 2015 by Modupe O. Otoide, Aluko&Oyebode, Lagos <www.pressreader.com/nigeria/thisday/20150303/282741995259623>accesed on 26 June, 2016.

[1093] Unreported suit No: FHC/L/CS/517/06 delivered on the 25th day of February, 2007 by Honourable Justice Ibrahim Auta.

affect not just the telecommunication operator in Lagos State but in the 36 States of Nigeria; and consequently a contravention of the Constitution as only the National Assembly had the power to make such law through the instrumentality of the Nigeria Communications Commission (NCC). The Court held that by its name, the law appears innocent but by the reading of section 2 which deals with the functions of the Agency, it seems to take over the function of the NCC Act which deals with the installation of Network mast, facilities, access, etc. and therefore encroached on the powers of the NCC to regulate the telecommunications facilities, towers and mast.[1094] Accordingly, it was wrong for the Lagos State Government to impose regulation on the telecommunication operators.

Owing to the paucity of case laws on the strict interpretation of environmental impact assessment laws like the case of *Gbemre,* it is viewed that while litigants are suing for compensation pursuant to the provisions of any environmental law, they can also address the issue of non-compliance with the requirement of environmental impact assessment by the project proponent. For example, while ventilating claims under the Nigerian Minerals and Mining Act,a litigant can address the issue of noncompliance of licensee or holder of a mining lease. This is because the requirement of environmental impact assessment is a *sina qua non* for such project as oil prospecting or mining.[1095]Importantly, too, the preponderance of proof and corroboration of the fact of such non-compliance with environmental impact assessment rests on the litigant.

6.5*LocusStandi* to Sue on Environmental Impacts Assessment Claims:

With respect to *locusstandi*, the Court has held in *Asaboro v Pan Ocean Oil (Nig) Ltd*[1096]that where a claimant fails to discharge the burden of proving the averments

[1094] It has been opined that there is need for the National Assembly to harmonise the areas of conflicts between the NCC and NESREA Acts with respect to the regulations of the telecommunications sector *vis-à-vis* the conduct of EIA and protection of the environment in Nigeria. RA Onuoha, Communication Mast and the Legal Framework for Planning Control in Nigeria: Problems and Prospects. <http://www.sachajournals.com/documents/image/ajlc2016onuoha001.pdf> accessed on 26 June, 2016.
[1095] Nigerian Mineral and Mining Act, 2007, s. 119.
[1096][2006] 4 NWLR (Pt. 971) 595, at 619 – 620, paragraphs E – B.

relating to his capacity, the status claimed by him in the pleadings is not proved or is abandoned, the effect of which is that the legal capacity in which the claimant instituted the action would collapse and the case would go down with it.

*Locus standi*has been held to be a fundamental or threshold issue of jurisdiction. In *UBN Plc v Ntuk,*[1097]the Court held as follows:

> *Locus standi*is a fundamental issue, it touches the competence of a suit and the jurisdiction of the court to determine same, because if a plaintiff lacks the *locus standi* to institute an action, there can be no jurisdiction on the part of the Court to entertain the action…

Similarly in the case of *Ajayi v Adebiyi*,[1098] the Supreme Court has held that:

> *Locus standi* and jurisdiction are interwoven in the sense that *locus standi* goes to affect the jurisdiction of the court before which an action is brought. Thus where there is no *locus standi* to file an action, the court cannot properly assume jurisdiction to entertain the action. *Locus standi* being an issue of jurisdiction can be raised at any stage or level of the proceedings in a suit even on appeal at the Court of Appeal by any of the parties without leave of court or by the court itself *suomotu*. The issue can be raised after the plaintiff has duly filed his pleadings by a motion and/or in a Statement of defence. *Locus standi* to initiate proceedings in a court is not dependent on the success or merits of a case; it is a condition precedent to the determination of a case on the merits.

It is settled law that when the issue of *locus standi* of a party to institute an action is raised, it must be taken first as it affects the jurisdiction of the Court to entertain the suit. This is so becauseif the issue of lack of jurisdiction succeeds that would terminate for all time the action of the plaintiff or claimant. As was held in*C.G.G. (Nig) Ltd v Amaewhule*,[1099]jurisdiction is very vital in the realm of administration of justice. Any step taken without jurisdiction is null and void, as it is tantamount to putting something upon nothing. The point must be reiterated that once the issue of jurisdiction is raised at any time and at any stage of the proceedings, even at the level of appeal, everything else has to stop to give the prime position of hearing on the jurisdictional issue.[1100]

[1097][2003] 16 NWLR (Pt. 845) 183 at 191.
[1098][2012] 11 NWLR (Pt. 1310) 137, at page 176, C – E.
[1099][2006] 3 NWLR (Pt. 967) 282, at 302, paragraphs E – F.
[1100]*Ajayi v Adebiyi supra,* at page 202, paragraphs C – D and E.

It is trite law that a party must be injured by an action which he is assailing before he can be heard.[1101] Strictly, the Court will not exercise its jurisdiction at the instance of a party who has no *locus standi*[1102] and where a claimant has no *locus standi* to bring a suit, the suit becomes incompetent and the court lacks jurisdiction to entertain it, the only order the court can make in the circumstance is that of dismissal.[1103]

In light of the foregoing judicial authorities among a plethora ofothers, it is convenient to state that in respect of environmental claims, it is only the party who has *locus standi* that can institute such action in court. Thus, similar to action in nuisance, a claimant in an environmental degradation claim must show how the degradation has affected him more than the rest of the public. For example, the claimant must show that as a result of the degradation caused by the activities of the defendant, damages had been caused to the claimant's cash and economic crops and trees, fish ponds, juju shrines and a farm house; and living houses respectively. It must however be proved that the damage resulted from the negligence of the defendant in carrying out its activities and operations. Notably, where the court lacks jurisdiction to entertain the matter, the claimant may still go without any remedy even though he had the requisite *locus standi* to institute the action, and his claims substantial and unimpeachable. This situation played out in the cases of: *C.G.G. (Nig) Ltd v Ogu,*[1104]*and C.G.G. (Nig.) Ltd v Amaewhule*[1105]where the Court held that the respondents (who were claimants at the trial court) should go home without remedies in damages, because the High Court where they instituted the action lacked the jurisdiction to entertain same.

In Nigeria, it seems that individual persons are yet to institute actions bordering specifically on a defendant's violation of the environmental impact assessment laws. This is largely because most environmental litigation involves disputes with government

[1101]*Resident Elect.Comm. v Nwocha*[1991] 2 NWLR (Pt. 176) 732 at 765; *Thomas v Olufosoye* [1986] 1 NWLR (Pt. 18) 685.
[1102]*Unoka v Agili*[2008] All FWLR (Pt. 423) 1349 at 1373 A – B.
[1103]*Ajayi's*case *supra*, at 202, paragraph G.
[1104][2005] 8 NWLR (Pt. 927) at 386.
[1105]*Supra* at 297, paragraph F.

agencies.[1106]As a result, most actions bordering on environmental impact assessment are presently or usually instituted at the instance of concerned government agencies and in most cases where the violating company does not comply with the demands of the agency to pay penalties. Thus, the agencies appears to institute the actions only to generate revenues and not because of any primary concern about the protection of the environment for the well-being of the citizenry and biodiversity.

The ubiquity of many adversely impactful projects that go on without due observance of the law on impact assessment proves the view that the agency is seemingly more revenue-driven, than the protection of the environment. This is particularly so as the agency allows project proponent to continue with the activities once the required penalty is paid. Admittedly, the researcher was yet to find any decided case in Nigeria where an action to enforce compliance with the environmental impact assessment law was instituted at the instance of an individual. At best, individual actions on environmental claims related only to damages caused to personal land and economic properties as a result of the activities of a company executing or operating a particular project.

6.5.1 *LocusStandi*in**Representative Capacity Environmental Claims (Class Action)**:

Where a claimant institutes an action in a representative capacity, he must provide the court with the authorisation for such representation.[1107]Furthermore, the interest of the claimant must be the same with the interest of the people he represents in the matter.[1108]The issue of *locusstandi* of individual persons to sue on environmental

[1106] For this reason, environmental law is intertwined with administrative law. BA Garner, *Black's Law Dictionary*, 7thEdn., p. 555

[1107]*Olasav Ezimuo*[2003] 13 NWLR (Pt. 848) 129, at 148, paragraphs B – C.

[1108]*Ejem v Offiah*[2000] 7 NWLR (Pt. 666) 662; *SPDC (Nig) Ltd v Otoko&Ors* [1990] 6 NWLR (Pt. 159) 693. However, in *Adediran& Anor v Interland Transport Ltd* [1991] 9 NWLR (pt. 214) 155, where the issue of *locus standi*was raised against the claimant who instituted the action for nuisance in a representative capacity, the Supreme Court by virtue of s. 6(6)(b) of the 1999 Constitution, a private person can commence an action on public nuisance without the consent of the Attorney-General, or without

protection related cases and on behalf of a community has been determined by the Court to the extent that standing to sue in Nigeria is today based on the doctrine of sufficient interest and no longer the narrow principle of pure personal interest.

In *Oronto Douglas v SPDC Ltd &Ors*,[1109] the Appellant's case was that the Respondents who were jointly engaged for the production of liquefied natural gas in his community were required to comply with the provisions of the EIA Act to first carry out a preliminary studies on the impact of the project on the environment, failing which they should be restrained by the Court from executing the project. The trial court, Federal High Court, Lagos Division dismissed the action for lack of *locusstandi* of the Plaintiff since he did not show any injury he suffered more than the rest members of the community. On appeal, the Court of Appeal[1110] remitted the matter back to the Federal High Court for trial *de novo* on the ground that the court was hasty to dismiss the suit based on a preliminary objection, which was filed without an accompanying affidavit and without considering the statement of claim filed to enable it to determine all the facts the Appellant was relying in instituting the cause of action. Thus, it was absurd for the trial Judge to have found that the appellant 'has not sustained any injury' as same was not supported by any material placed before the trial Judge.

In the view of Ladan, the trend in other jurisdictions can be seen in a plethora of judicial authorities. For instance, individuals and groups have generally been able to meet the requirement if they show an injury to their aesthetic, conservation or recreational interests.[1111] Similarly, in France, the administrative tribunal of *Rouen* held that an association for the promotion of tourism and the protection of nature could present evidence of a sufficient interest, given its object as defined in its statutes, to contest an authorization for a waste treatment plant. The court also found that labour unions, notably

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joining him as a party. This decision no doubt whittled down the strict adherence of court to *locus standi*; but not with respect to capacity in representative action which interest must be the same.

[1109](1998) LPELR-6457.

[1110] Per Musdapher, JCA (as he then was) delivering the leading judgment.

[1111]*SCRAP v U.S.*, 412 U.S 669 (1973).

those concerned with chemical industries whose interest was to maintain the authorization, also had the right to be heard. Consequently, an appellate court recognized that a nature protection association has standing to intervene in a case seeking the annulment of an authorization permitting the operation of a uranium mine.[1112]

Furthermore, in some jurisdictions, traditional property doctrines have served to expand capacity or standing to sue. Thus, in *AbdikadirSheika Hassan and Others v Kenya Wildlife Service,*[1113] a High Court in Kenya permitted the plaintiff to sue in a representative capacity for himself and his community to bar the defendant, an agency from removing or dislodging a rare and endangered species from its natural habitat. The Court observed that according to customary law, those entitled to use the land are also entitled to the fruit thereof, including the fauna and flora; thus the applicants had standing to challenge the agency's action. In the same vein, a Tanzanian High Court has granted leave to residents of a neighborhood to sue the City Council to halt an illegal dump site that was found to deliberately expose their lives to danger.[1114]

Interestingly too, it has been held that a State Government can sue the Federal Government on environmental issues relating to and affecting the interest of the citizens of that State. For example, in *Gray Davis et al. v US EPA*,[1115] the Federal government of United States of American argued that the State of California lacked standing to challenge an Environmental Protection Act action denying a waiver from some regulations on air quality. The Court held that California was acting to protect its own interests and that furthermore, the Governor and state agency had acted in their official capacities with proprietary interests in the land, air and water of the state. These proprietary interests according to the court were sufficiently concrete to give the Governor and State agency standing to bring the action.

[1112] Tribunal *adminsratifdeRouen*, 8 June 1993, Association Union*touristique des amis de la nature et autres*, R.J.E. 1994/1, p. 61.
[1113](High Court of Kenya, Case 2059/1996).
[1114]*FestoBalegele& 749 Others v Dar es Salaam City Council* (Civil Cause No. 90/1991, High Court Tanzania.
[1115] (9th Cir. July 17, 2003).

In South Africa, locus *standi* to sue on environmental matters is enacted thus:

> Any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act, including a principle contained in any provision of a specific environmental management Act, or of any other statutory provision concerned with the protection of the environment or the use of natural resources -
> (a) in that person's or group of person's own interest;
> (b) in the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings;
> (c) in the interest of or on behalf of a group or class of persons whose interests are affected;
> (d) in the public interest; and
> (e) in the interest of protecting the environment.[1116]

Notably, too, in South Africa the jurisdiction of court on environmental matters extends to the Magistrate Courts.[1117] This was the former position in Nigeria in the Oil Pipelines Act, where the court held that the High Court and Magistrate Courts have jurisdiction to entertain compensation arising from petroleum spills from a pipeline.

From the analysis of these cases, the Courtssare agreed that actions on environmental claims can be instituted in representative capacities. Thus, where a large number of individuals are environmentally affected and suffered similar damage or injury, they can institute a class action[1118] to be filed by one or more members of the group or class of persons so affected. These class actions have been recommended by courts, as a means to enforce the Constitutional right to a healthy environment when the specific facts threaten to violate the rights of an undermined number of people.[1119]

6.5.2 **Public Interest Litigation on Environmental Impacts Assessment**:

[1116] NEMA, s.32(1).
[1117] NEMA, s. 34H.

[1118] Class action or action instituted in representative capacity helps to prevent proliferation of separate and individual suits.In representative actions, the authority to represent a group is usually given by the said group. Although capacity to sue in representative capacity can be challenged in the absence of authorisation of such representative, it does not vitiate the validity of the action. The court merely approves the authority already given. If a representative falls out with the people he represents, the court has power to add or substitute any person represented in the representative action and bring him in as at the date of the original action. *Otapo v Sunmonu*[1987] 2 NWLR (Pt. 58) 587 at 600, A – B, and 604, B – C; *Atanda v Olanrewaju*[1988] 4 NWLR (89) 394 at 403, A – B, 408, C – D.
[1119]*Jose Cuesta Novoa and Miciades Ramirez Melo v The Secretary of Public Health of Bogota* (May 17, 1995), Const. Ct,.Clolomba; Minors Oposa, Sup. Ct. Philippines, cited in MT Ladan, *supra*.

Distinct from class action, public interest litigation such as environmental action may be allowed by court even when the litigant is not directly affected or impacted. For instance, where right to a clean and healthy environment is incorporated in a Constitution, courts would usually allow any action brought under such provision, based on public interest litigation. In other words, where a constitution includes a rights to a clean and healthy environment, court have often allowed public interest litigation.[1120] A core and recent example of public interest litigation is the Deepwater Horizon Case – BP Gulf of Mexico Oil Spill.[1121]

The Gulf of Mexico Oil Spill relates to the explosion and sinking of the oil drilling rig called Deep Water Horizon on April 20, 2010, and which resulted in the death of 11 workers in the Deepwater Horizon. This is perhaps the largest spill of oil in the history of marine oil drilling operations. Before the spillage could be brought under control on 15th July, 2010, about 4 million barrels of oil had spilled and flowed from the damaged well over an 87-day period. Scientific and on-sight researches have revealed that the impacts of the spill are very significant and ongoing.[1122] Thus, the United States on 15th December, 2010 filed a complaint in District Court against BP Exploration & Production and several other defendants alleged to be responsible for the spill. It was the

[1120] MT Ladan*supra*, at 37 – 38; the reference decided authorities on public interest litigation is apt. Thus, in *Antonio Horvath KisyOtros v National Commission for the Environmental* (March 19, 1997) the Supreme Court of Chile granted standing to citizens not directly affected because it found that the constitutional right to a healthy environment does not impose a requirement that the affected people themselves present the action. Similarly, *The Environmental Action Network Ltd v The Attorney General and the National Environment Management Authority* (High Court of Uganda at Kampala, Misc. App. 39/2001) held that article 50 of the Ugandan Constitution allows public interest litigation. Furthermore, the inclusion of environmental rights in the South African constitution expanded standing to sue. See *Wildlife Society of Southern Africa & Others v Minister of Environmental Affairs & Tourism & Others*, Case 1672/1995 (South Africa) (allowing members of environmental groups to compel enforcement of Decree 9 (Environmental Conservation) (1992) promulgated by the Government of Transkei). In *Prakash Mani Sharma & Others on behalf of Pro Public v. Prime Minister & Secretariat and Others,* writ No. 3017 (1995), the Supreme Court of Nepal, accepted the *locus standi* of individuals suing in the public interest to protect public property and the "public right" to have the government act in conformity with Directive Principles in the Constitution.In *Ms. Shela Zia and Others v. WAPDA, PLD* 1994 SC 693, the Supreme Court of Pakistan held that the right to a clean environment is a fundamental right of all citizens of Pakistan covered by the right to life and the right to dignity in arts. 6 and 14 of the Constitution of 1973. The judgement clarified that public interest litigation could be brought without the necessary rule of standing to sue or of being directly affected as an aggrieved person.

[1121] *United States v. BP Exploration & Production Inc., et al.*, No. 10-4536 in MDL 2179 (E.D. La.)

[1122] Accessed 10th May, 2017 from: https://www.edf.org/ecosystems/whats-ahead-gulf?

case of the US government, Claimant therein, that the following the *Deepwater Horizon* incident among other things, the BPXP violated the Clean Water Act (CWA) and is liable without limitation under Oil Pollution Act (OPA) for removal costs and damages, including for, *inter alia*, injuries to, destruction of, loss of, or loss of use of natural resources and net loss of taxes, royalties, rents, fees, and net profit shares due to the injury to, destruction of, and loss of real property, personal property, and natural resources.

While the matter was pending in court, the 1st Defendant, BP Exploration and Production opted for an out-of-court settlement following which leave of court was sought and secured to so explore. In the end, the parties achieved settlement out of court, otherwise termed 'Consent Decree' This Consent Decree therefore addressed civil claims arising from the *Deepwater Horizon* Incident instituted by the United States and/or the Gulf States, namely: Alabama,[1123] Florida,[1124] Louisiana,[1125] Mississippi,[1126] and Texas[1127]) against BPXP and BP Entities, including claims for civil penalties**,** natural

[1123]*State of Alabama v. BP p.l.c.*, Case No. 2:10-CV-04182 (E.D. La.), that was transferred to MDL 2179 (E.D. La.).Alabama's complaint alleges, among other things, that BPXP and certain other BP Entities violated the Alabama Water Pollution Control Act, Ala. Code § 22-22-1 *et seq*., the Alabama Air Pollution Control Act, Ala. Code § 22-28-1 *et seq*., the Alabama Hazardous Wastes Management Act, Ala. Code § 22-30-1 *et seq*., and the Alabama Solid Waste and Recyclable Materials Management Act, Ala. Code § 22-27-1 *et seq.*, and therefore are liable for civil penalties under those statutes.

[1124]*State of Florida v. BP Exploration & Production, Inc., et al.*, Case No. 5:13-cv-00123 (N.D. Fla.), that was transferred to MDL 2179 (E.D. La.). Florida's amended complaint alleges, among other things, that BPXP and certain other BP Entities are liable for damages, including, but not limited to, loss of taxes, under OPA, common law, and general maritime law, and punitive damages under general maritime law and Florida law.

[1125]*State of Louisiana v. BP Exploration & Production, Inc.*, Case Nos. 11-cv-0516 and 10-cv-03059 in MDL 2179 (E.D. La.). Louisiana's amended complaint alleges, among other things, that BPXP and certain other BP Entities violated the Louisiana Environmental Quality Act/Water Control Law, La. R.S. § 30:2011 *et seq*., § 30:2071 *et seq*., and are therefore liable for civil penalties under that statute.

[1126]*Hood v BP Exploration & Production, Inc., et al.*, Case No. 1:13-cv-00158 (S.D. Miss.), that was transferred to MDL 2179 (E.D. La.) on May 9, 2013. Mississippi's complaint alleges, among other things, that BPXP, certain other BP Entities, and other parties are liable for damages to the State, including for injury to natural resources, economic losses, and costs of providing increased public services under OPA and general maritime law, and for punitive damages under general maritime law.

[1127]*State of Texas v BP Exploration & Production Inc., et al.,* Case No. 1:13-cv-315 (E.D. Tex.), that was transferred to MDL 2179, where Texas filed an amended complaint on June 18, 2013, captioned *State of Texas v. BP Exploration & Production Inc., et al.,* Case No. 13-cv-4677 (E.D. La.). Texas' amended complaint alleges, among other things, that BPXP, certain other BP Entities, and other parties are liable for civil penalties under Texas' Oil Spill Prevention and Response Act, Tex. Nat. Res. Code § 40.001 *et seq*., and the Texas Water Code, Tex. Water Code § 26.001 *et seq*. Texas' amended complaint also sought cost recovery and damages, including, without limitation, for injury to natural resources, lost tax revenues, lost state park revenues, and other economic damages, under OPA, the Comprehensive Environmental Response, Compensation, and LiabilityAct ("CERCLA"), 42 U.S.C. § 9601 *et seq*., Texas' Oil Spill

resource damages, response costs, and other damages. The Gulf States and BPXP also entered into a separate settlement agreements addressing economic damages and other claims arising from the *Deepwater Horizon* Incident asserted by each Gulf State against BP entities.

Defendant, BPXP having agreed to pay more than $20 billion as settlement;[1128] it was approved and entered as consent Judgement or Decree by the court on 4thApril, 2016. It is important to note that all the companies or entities to BPXP were alsoindividually held liable by the Court to the people and government of the United States. For example, on the US claim for relief against Anadarko, the said company was liable to the United States for civil penalties under the Clean Water Act,[1129] in the amount of $159,500,000.00 (one hundred fifty-nine million, five hundred thousand dollars and zero cents). The rule for these punitive penalties was enacted by the Clean Water Act. Subsequently, following the enactment of the Restore Act by the US Congress in 2012, most of the civil fines and penalties stemming from the Gulf oil spill would be spent on Gulf Coast restoration. It is aimed that the funds realised and applied pursuant to the Restore Act will go a long way in healing the delta and restoring the Gulf. The success and purpose of the settlement out of court in this case that lingered for over six years was captured in the words of Fred Krupp as follows:

> Today's approval sets in motion the largest environmental restoration program in U.S history, totaling more than $20 billion for Gulf Coast recovery and restoration. Six years after the spill, this historic decree represents a significant milestone for the ecosystems, economies and communities of the Gulf Coast that were damaged by the oil disaster. We commend the Gulf Coast states, U.S. Department of Justice and BP for reaching a resolution.
> Now that the agreement is final, it is imperative that the states and agencies implementing these restoration programs use this money as it is intended – to create a more resilient Gulf ecosystem. A comprehensive approach across these funding streams is key to the long-term sustainability and vitality of America's

Prevention and Response Act, Tex. Nat. Res. Code § 40.001 *et seq*., and the Texas Water Code, Tex. Water Code § 26.001 *et seq*.

[1128] Under the Clean Water Act alone the agreed penalty was up to $5.5 billion, and natural resource damages was up to $8.8 billion.

[1129] 33 U.S.C. s. 1321(b)(7).

> Gulf Coast. We encourage the Administration and Gulf Coast states to make speed and innovation the benchmarks for how these funds are put to use.[1130]

While the awarded damages in favour of the United States of America may seem very punitive by the estimation of many, it is submitted that no matter the amount of damages recovered, the effect of the Gulf of Mexico BP oil spill incident may never be completely mitigated or restored to its undisturbed natural state for ages beyond human estimation. This assertion is strengthened in view of a small sampling of the impacts described in the Deepwater Horizon Oil Spill Damage Assessment and Restoration Plan and Programmatic Environmental Impact Statement by the National Wildlife Federation and Ocean Conservancy scientists,[1131] as follows:

1. Estimate of the total number of birds killed was from 56,100 to 102,400 birds, of which at least 93 species of birds across all five Gulf Coast states were exposed to oil.
2. Beach and Dune Habitat: the oil spill covered at least 1,300 miles of the Gulf coastline, including 600 miles of beach, dune and barrier island habitat.
3. Loss of Human or public use of 16,857,116 days of boating, fishing and beach-going experiences and the worth was kept at $528 million to $859 million.
4. Loss of Oysters estimated at between 4 and 8.3 billion of over three generations (minimum recovery time). The dead oysters would have produced a total of 240 to 508 million pounds of fresh oyster meat.
5. Salt marsh plants of which 53 per cent was lost across 350-721 miles of shoreline in Louisiana and the effect lasted for three years in increased erosion and wetlands.
6. Sargassum, a floating seaweed that provides habitat for young fish and sea turtles, was exposed to oil, and may have caused the loss of up to 23 percent of this important habitat.
7. Seagrass beds covering a total area of about 272 acres were lost.

[1130]Statement of Fred Krupp, President of Environmental Defense Fund, on 4th April, 2016; after the consent judgment in the matter was approved. https://www.edf.org/media/judge-approves-bp-deepwater-horizon-consent-decree.

[1131] Ryan Fikes, What We Know about the BP Oil Disaster, November, 2015 accessed 10th May, 2017. from: http://blog.nwf.org/2015/11/what-we-know-now-about-the-bp-oil-disaster/

8. Estimate of about 2-5 trillion larval fish were killed. The loss of larval fish likely translated into millions to billions of fish that would have reached a year old had they not been killed.
9. Several of species of sea trout (an estimate of about 20-100 billion) were killed.
10. Shrimp - young white, pink and brown shrimp was heavily impacted and killed.
11. Red drum fell by up to 47 percent along marsh shorelines in Louisiana and estimated 700 tons of red drum lost.
12. Nearly a quarter of whales was killed of which the most affected was the Bryde's whale, with only about 50 Bryde's whales left in the Gulf. Will Bryde's whales ever recover?
13. Bottlenose dolphins in Barataria Bay and Mississippi Sound – two areas particularly affected by the disaster may have decline by half, and the populations are expected to take 40-50 years to recover. After the oil disaster, more than 75 percent of pregnant dolphins observed within the oil footprint failed to give birth to a viable calf.
14. Coral colonies and the reef fish associated with them were extensively damaged along the continental shelf edge, known as the Pinnacles.
15. Sea turtles estimated between 61,000 and 173,000 of all ages were killed; including about 10-20 percent of the nesting females which would have laid about 65,000 to 95,000 hatchlings.

6.6 **Bars, Limitation of Suits and Requirement of Pre-Action Notice**:

The law establishing most of the agencies specifically provides for the time limit or period within which to sue the agency and requirement of pre-action notice on the agency before instituting any such action against it; otherwise, an objection to the action in court in that regard would usually succeed.A suit commenced in default of service of pre-action notice is incompetent against the party who ought to have been served with the notice

provided such party raises objection about the competence of the suit.[1132]In the same vein, where there is no issuance of pre-action notice as provided by law, there is lacking a condition precedent[1133] which could rob the court of assumption of jurisdiction.[1134]

Primarily, the Agency saddled with the administration of the EIA Act is the National Environmental Standards and Regulations Enforcement Agency, established by the NESRAEA Act, 2007. By section 32 of the NESREA Act, the requirement of pre-action notice[1135] is enacted and no suit shall be commenced against the Agency before the expiration of a period of one month, after service of the written pre-actionnotice on the office of the Director-General at the Head Office of the Agency, and which notice shall clearly state the:cause of action;particulars of claim; name and place of abode of the intending claimant; andreliefs claimed.

Apart from requirement of pre-action notice, it would appear that most actions instituted under certain environmental enactments are regulated by limitation law. A cause of action is statute-barred if it is commenced beyond the period laid down by the statute within which such action must be filed in court. It is therefore important to consider limitation periods before commencing any environmental actions because as the Court has held in *Ajayi v Military Administrator of Ondo State*,[1136]where there is lapse of time with respect to the time limited for instituting the action, the proceedings become statute-barred, and consequently a nullity, no matter how well conducted. Thus in order to discover whether a cause of action is statute-barred, recourse is had to the Statute of

[1132]*Mobil Producing Nigeria Unlimited v Lagos State Environmental Protection Agency &Ors*[2002] 18 NWLR (Pt. 798) 1 at 32 – 33; *Aboshi v Fele&Ors* (2012) LPELR-8610(CA) p. 21, paragraphs. F – G.
[1133] In *Sken Consult v Ukey* (1981) 1 S.C. 6; *Teno Engineering Ltd v Adisa*[2005] 7 M.J.S.C 89,it was held that the condition precedent that determines court's jurisdiction could also be service of court process. This is also applicable to payment of filing fees.*Shell v Isaiah* [2001] 5 SC (Pt. 11) 1; *Okolo v UBN* [2004] 2 M.J.S.C 69.
[1134]NNPC Act, s.12; *Asogwa v Chukwu* [2003] 4 NWLR (Pt. 811) 540 at 552; *Mobil Producing (Nig) Unlimited v LASEPA, FEPA & ORS* [2002] 18 NWLR (Pt.798) 1; *Nigerian Ports Plc v Oseni*[2000] 8 NWLR (Pt. 669) 410; *Amadi v NNPC* [2000] 10 NWLR (Pt. 674) 6; *Nigerian Cement Co. Ltd v Nigeria Railway Corporation & Anor* [1992] 1 NWLR (Pt. 220) 747; *University of Ife v Fawehinmi Construction Co. Ltd* [1991] 7 NWLR (Pt. 201) 26; *Abakaliki Local Government Council v Abakaliki Rice Mills Owners Enterprises Nigeria* [1990] 6 NWLR (Pt. 155) 182.
[1135] Similar enactments are contained in NOSDRA Act, s. 21; NDDC Act, s. 25; and NNPC Act, s. 13.
[1136][1997] 5 NWLR (Pt. 504) 237; *Obiefuna v Okoye* [1991] 2 NWLR (Pt. 174) 379; and *Egbe v Adefarasin*[1987] 1 NWLR (Pt. 47) 1.

Limitation which provides that no court shall entertain proceedings for the enforcement of certain rights if such proceedings were commenced after the lapse of a definite period of time. This position underscored the decision of the Supreme Court in *Texaco Panama Inc v SPDCN Ltd,*[1137]where it upheld both the Court of Appeal and trial Court's decision to the effect that the action of the Appellant for damages suffered at the Respondent's oil terminal 3 years after the occurrence of the incident was statute-barred by virtue of sections 3, 7(3), 8 and 9 of the Oil Terminal Dues Act, and section 110(1) and (2) of the Ports Act.[1138]

Furthermore, in *Asoboro v Pan Ocean Oil (Nig.) Ltd,*[1139] the Court of Appeal upheld the trial Court's decision that a widow's action for trespass, destruction of rubber trees in the plantation and extensive damage of her deceased husband's land caused by the oil spillage from the drilling operations of the Respondent was statute-barred because it was instituted 12 years after the incident. Specifically the claim for compensation was brought under the Petroleum Act and the regulations made thereunder. In importing statute of limitation, the Court held that even though limitation law was not specifically enacted in the Petroleum Act (as argued by the Appellant), it is not the intention of the Act that a claimant could wait for an indefinite period of time after the accrual of his right to seek redress.[1140]Another environmental case in which the limitation law was applied and upheld is *Gulf Oil Company (Nig.) Ltd v Oluba,*[1141] where the Court of Appeal upheld a preliminary objection of statute-bar raised at the trial Court that the action filed 13 years after the occurrence of incidents of oil exploration on the Respondents' land which injuriously affected swamps, channels and lakes resulting in loss of income from fishing

[1137][2002] 5 NWLR (Pt. 759) 209 at 241 – 242, paragraphs H – B, D.
[1138] These laws in addition to a similar provision as s. 32 of the NESREA Act, provide for limitation period of 12 months after the negligent act or the ceasing thereof, the expiration of which has the effect of statute-bar.
[1139][2006] 4 NWLR (Pt. 971) 595.
[1140]*Supra* at 617 – 618, G – B; although the court innocuously held that the claim of the Appellant for compensation and damages for destruction of the rubber plantation as a result of the Respondent's unlawful entry into their estate is an action relating to land. This Court's acknowledgement of the destruction to the Appellant's economic trees and damage done to land by the Respondent indicates that barring the issue of statute-bar the case would have been meritorious.
[1141][2003] FWLR (Pt. 145) 712.

and farming. The objection was predicated on the applicable Limitation Law (of Delta State) which provided for six years of limitation from the date on which the cause of action accrued.

Another important aspect aimed at protecting the properties and officers of an agency is the Public Officers Protection Act.[1142]Public officers readily rely on the protection of the Act in order to be shielded against prosecution after a period of time has lapsed.[1143]The purport of the limitation law is to abridge the time for litigants to institute legal actions against public officers. It is hinged on the equitable principle of: 'equity aids the vigilant, not the indolent'. Thus, he who does not institute the action within the time frame of the limitation of action law would be shut out from further ventilating his claim against any such public officer. Consequently, such action would become statute-barred.However, in *Egbe v Alhaji*,[1144]the Supreme Court held that such public officer must be seen to have acted within his duty as public officers before he can be accorded the protection of the Act; otherwise he cannot be so protected. More specifically, the Supreme Court in *IbrahimvJSC*,[1145] per Iguh JSC further held:

> Once they step outside the bounds of their public authority and are acting outside the colour of their statutory or constitutional duty, they automatically lose the protection of the law.

Similarly, in *Yabugbe v COP*[1146]the Supreme Court held that no protection beyond the statutory limitation of time to bring an action will avail a public officer in offences of a criminal nature. This is because criminal prosecution or trials cannot be time–barred. Thus criminal prosecution can be instituted against an accused person no matter the length of time it takes, after the alleged offence had been committed. This is why the administration of Buhari, through the instrumentality of the Economic and

[1142]Cap.P41, Laws of the Federation of Nigeria 2004, but at present appropriately cited as Public Officers Protection Act (as amended) by virtue of its amendment in 2009. Note that the contents of this enactment are matters in the Concurrent Legislative List over which both Federal and State Governments could make laws. Thus all that is expected of a State Government is to adapt the Act by simply re-designating or labelling same as 'Law'.
[1143] NOSDRA Act, s. 20; NDDC Act, s. 24; NNPC Act, s.12; Public Officers Protection Act, s. 2.
[1144][1990] 1 NWLR (Pt. 128) 546, at 587, paragraphs F – G.
[1145][1998] 14 NWLR (Pt. 584) 1 at 32 paragraphs B–F.
[1146][1992] 4 NWLR (Pt. 234) 152 at 170-171, paragraphs H – E.

Financial Crimes Commission is probing into the activities of some reputable Nigerians involved in spending of government's money meant for purchase of arms for the Nigerian military for the purpose of prosecuting them, for example, AlhajiSamboDasuki, Chief Security Adviser to the former President, Goodluck Ebele Jonathan.

6.7 **Encouraging Public Access to Information**:

Strictly, the purpose of environmental impact assessment laws relates not only to the protection of the environment but also public health, welfare, and water supplies.[1147] For this reason the need for environmental agencies to encourage public access to necessary information cannot be overemphasized. Recognised and addressed by the EIA Act, this need is captured as part of the goals and objectives of environmental impact assessment to encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or trans-State or on the environment of bordering town and villages.[1148]

The public, especially the people of an area are supposed to be involved in the assessment of the environmental impact of a project to be sited in their locality. This is why a review panel appointed pursuant to the provisions of the EIA Act ensures thatthe information it requires for an assessment is obtained and made available to the public; as well as hold hearing on the assessment in a manner that offers the public an opportunity to participate in the assessment.[1149]Similarly, the NESREA Act, captures this need of encouraging public access to information as part of the National Environmental Standards and Regulations Enforcement Agency's functions and powers, to create public awareness and provide environmental education on sustainable environmental management, as well

[1147] NESREA Act, ss. 20(1)(e); 21(2); 22(1)(b); 23(1)(2); 25(1).
[1148]EIA Act, s. 1(c); 4(b).
[1149]EIA Act, s. 36(a) and (b).

as promote private sector compliance with environmental regulations, except however regulations in the oil and gas sector.[1150]

Furthermore, the Agency is expected to: undertake, coordinate, utilize and promote the expansion of research experiments, surveys and studies by public or private agencies, institutions and organisations concerning causes, effects, extent, prevention, reduction and elimination of pollution and such other matters related to environmental protection and natural resources conservation other than in the oil and gas sector.[1151] Importantly, it is also enacted that the Agency shall, at intervals apply the funds at its disposal to publicize and promote the activities of the Agency; as well as collect and make available, through publications and other appropriate means basic scientific data and other information pertaining to environmental standards, albeit in co-operation with public or private organisations.[1152]

The above enactments notwithstanding, it is perturbing that most of the staff or officers of the environmental agencies shy away from making copies of relevant documents or regulations available to citizens who need them. Hiding under the excuse of protection of official documents and secrets, the public officers would usually dismiss demand for the needed documents, classifying them as official documents, which they are not authorised to give out. Flowing from this excuse, it is important to make reference to the Official Secrets Act,[1153] and Freedom of Information Act, 2011. This is because provision for protection of public officers who act as whistleblowers, is well made and safeguarded by these laws.

Meanwhile,the Official Secrets Act among some other extant secrecy laws,[1154] was enacted to provide for or to secure public safety, particularly with respect to security,

[1150] NESREA Act, s.7(l).
[1151]NESREA Act, s. 8(m).
[1152]NESREA Act, s. 14(h) and (p).
[1153] Cap O3, Laws of the Federation if Nigeria, 2004.
[1154] For example, Public Complaints Commission Act, Cap P 37 LFN 2004 at s. 5(5)(6); Evidence Act, 2011 at ss. 189, 190 and 191; Criminal Code Act, Cap C 38 LFN 2004 at s. 97(1), and Statistics Act, 2007 at s.8(6); 26(1)(2).

intelligence and defence. In *ESUST v I.J.M.E. LTD,*[1155]the Court of Appeal held that the Official Secrets Act provides for the protection of official information; and it is a criminal offence under the Act for a person acting on behalf of the Government to leak out classified matter or information to whom,he is not authorised to leak it. On the other hand, Freedom of Information Act (FOIA) was enacted for the purpose of making public records and information more freely available; by providing for public access to such records and information, in a manner consistent with the public interest and the protection of personal privacy.[1156] Consequently,public officers in environmental agencies who make available to the public any information which enhances awareness on the protection of the environment are protected by law. This is moreso, as the FOIA is aimed at protecting whistleblowers or public officers in service from adverse consequences in disclosing certain kinds of classified (official) information without authorization.[1157]

It is therefore discouraging that copies ofRegulations on environmental protection and compliance with environmental impact assessment are hardly assessed by the public. This is because, rather than avail the public of these Regulations free of charge (at least by making them accessible on-line as is applicable in some jurisdictions)[1158]the regulatory agencies in Nigeria sell them at exorbitant prices.[1159] In some cases, even when a citizen has the money to purchase copies of the regulations, they are hardly available at the Agency's office, especially with the introduction of the unified Treasury Single Account system by the current administration. In this case, a prospective buyer

[1155] [2010] 11 NWLR (Pt. 1205) 297, at pages 310 – 311, paragraphs H – D, wherein the Court of Appeal considered some of the provisions of the Official Secrets Act.
[1156] Freedom of Information Act (FOIA), 2011, s. 1(1)(2) and (3).
[1157] FOIA, s. 27(1)(2) and (3). Even section 28 of the Act also precludes the application or operation of the Official Secrets Act with respect to divulging classified information within the meaning of the Official Secrets Act, Cap O3, LFN 2004.
[1158] For example, United States of America and England, and Australia.
[1159] For example, copy of Electrical/Electronic Sector Regulations, 2011 of 33 quarto size leaves costs ₦3,500; copy of Coastal and Marine Area Protection Regulations, 2011 of 16 quarto size leaves costs ₦2,500; copy of Control of Alien and Invasive Species Regulations, 2013 of 11 quarto size leaves costs ₦1,000, etc. This is contrary to the proviso of s. 21 of the EIA Act (as amended) to the effect that the public should be given opportunity to examine and comment on screening reports and record filed at the Agency and public registry and that such opportunity should include making available to the public any screening reports at no cost.

would be made to go through the stress of going to a bank to pay the prescribed cost of the Regulation and generate a confirmation of payment number before returning to the Agency's office for collection of the copies paid for.

It is also worrisome that apart from NESREA and NOSDRA offices, there appears to be no other sale outlets for these regulations which are supposed to be widely circulated, owing to their importance as it relates to environmental impact assessments and the protection of the environment. It is worse at the ministries of environment; because even regulations made under the defunct Federal Environmental Protection Agency (FEPA) which still serve as guides to various sectors of the economy with respect to the protection of the environment are out of print, let alone been circulated.

It is pertinent to allow the public unrestricted access to environmental protection laws and regulations. This will afford civil society groups and other non-governmental organisations the opportunity to invariably assist the environmental agencies in spreading more awareness on environmental protection. It is also opined that the agencies may pursuant to their enabling laws commit part of their funds in the generation of employment of teeming youths to serve as its whistle blowers or informants. By so doing the agency will boost its operation, coverage and purpose; as well as fulfill government's obligation to generate jobs for its teeming population. The whistleblowers would be deployed to various nooks and crannies of each State of the federation; and their work would be to discover projects for which environmental impact assessment is required.

Based on their terms of reference, the work of whistle blowers and informants will no doubt assist the agency to discover and trace many companies involved in or executing without compliance, projects for which impacts assessments are required.This strategy will not only succeed for the purpose of enforcing the EIA Act, it would also work in the protection of the larger society from security threats and activities of cultists. When the informants who should usually be indigenes of a locality discover the activities

of miscreants capable of constituting security threats, they will swiftly inform the security agencies, to rise to the challenge.

On tackling the issue of non-justiciability clause in the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Supreme Court in the case of *Abacha v Fawehinmi*,[1160]held *inter alia*that by virtue of the enactment of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act,[1161] the Charter which was a treaty has been domesticated in Nigeria as one of the municipal laws;[1162] following which Nigerian courts must give effect to it like all other laws falling within the judicial powers of the courts.[1163] Importantly, this land mark decision on the applicability of the African Charter on Human and Peoples Rights in Nigeria has invariably expanded and made justiciable the provisions of chapter II of the Nigerian Constitution on the Fundamental Objectives and Directive Principles of State Policy,[1164] which had in time past been known and declared to be non-justiciable.[1165]

In *A.G. Ondo State v. A.G. Fed*,[1166]the Supreme Court established that the provisions of Chapter II can be enforced in Nigeria by Nigerians. It was contended whether the Independent Corrupt Practices and Other Related Offences Commission (ICPC) Act was enacted according to the Constitution. Querying the constitutionality of the ICPC Act and the powers of the Federal Government to legislate on corruption, the Claimant contended that the National Assembly had no authority to enact the Act since corruption is not enumerated in the Exclusive or Concurrent Legislative Lists as

[1160][2000] 6 NWLR (Pt. 660) 228.
[1161] Formerly Cap. 10 Laws of the Federation of Nigeria 1990, but now re-designated as Cap A 9, Laws of the Federation of Nigeria, 2004.
[1162]It is important to note that it was earlier decided in the case of *Labiyi v Anretiola* [1992] 8 NWLR (Pt. 258) 139that the provisions of the African Charter are in a class of their own and do not fall within the classification of the hierarchy of laws in Nigeria in order of superiority. However, the decision in *Abacha v Fawehinmi* has settled the position to the effect that the classification of the Charter is invariably at par with the Constitution.
[1163] S. 1 of the Charter, provides: '1. As from the commencement of this Act, the provisions of the African Charter on Human and Peoples Rights which are set out in the schedule to this Act shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria'.
[1164]Particularly, s. 20 of the Constitution on protection and improvement of the Nigerian environment.
[1165] S. 6(6)(c) of the Constitution, and *Uzoukwu v Ezeonu*II [1991] 6 NWLR (Pt.200) 708.
[1166][2002] 9 NWLR, (Pt. 772) 222.

contained in the Second Schedule to the Constitution. It was further argued that corruption was therefore a residual matter, which only State Houses of Assembly could legislate or make law on. In giving its judgement, the Supreme Court relied on two provisions in the Constitution:

1. Section 15; sub-section (5) of the Constitution, contained in Chapter II, which enacts that: *The State shall abolish all corrupt practices and abuse of power*.
2. Item 60, paragraph (a) of the Exclusive Legislative List contained in Part 1 of the Second Schedule to the Constitution; which List confers on the National Assembly the power to establish and regulate authorities for the Federation or any part of the Federation to promote and enforce the observance of the Fundamental Objectives and Directive Principles of State Policy contained in Chapter II of the Constitution.

In the end, the Supreme Court upheld the validity of the ICPC Act, per Uwais CJN, as follows:

> …it is incidental or supplementary for the *National Assembly to enact the law that will enable the ICPC to enforce the observance of the Fundamental Objectives and Directive Principles of State Policy*. Hence the enactment of the Act, which contains provisions in respect of both the establishment and regulation of ICPC and the authority of the ICPC to enforce the observance of the provisions of section 15, subsection (5) of the Constitution. To hold otherwise is to render the provisions of item 60 (1) idle and leave the ICPC with no authority whatsoever. This cannot have been the intendment of the Constitution. (Emphasis supplied).

Notably, the foregoing decision of the Supreme Court indicates that the provisions of Chapter II of the Constitution can be made justiciable by legislation. Thus, the said provisions can be enforceable, if the National Assembly enacts any specific law to meet its provisions. In other words, where the National Assembly has enacted any specific laws on any of the provisions of the chapter, the Court can enforce them. Consequently, the apex Court has invariably left the fate of the enforceability of economic and social rights of citizens in the hands of the National Assembly. This is why some specific laws have been enacted to take care of some of the constitutional provisions of Chapter II. For example: African Charter on Human and Peoples Rights (Ratification and Enforcement)

Act; the Universal Basic Education Act;[1167] Child Rights Act;[1168] etc. Under these laws, Nigerian citizens can validly bring their claims with reference to the relevant aspects of Chapter II of the 1999 Nigerian Constitution (as amended).

In light of the foregoing, it is submitted that aspects of environmental protection which ought to be responsibility of government and which are made non-justiciable by the Constitution have invariably become justiciable by virtue of specific enactments such as: Environmental Impact Assessment Act, National Environmental Standards and Regulations Enforcement Agency Act and the National Oil Spill Detection and Response Agency Act, among others. These lawscan at the instance of the citizens be enforced by recourse to courts of law in appropriate circumstances.

[1167] The right to education can also be enforced under the African Charter on Human and Peoples' Rights; by the express provision of its Article 17 as follows: 'Every individual shall have the right to education'.

[1168] The Child Rights Act, 2003 which evolved from the United Nations Convention on the Rights of the Child was domesticated by the National Assembly as a Federal law to be ratified by the various States Houses of Assembly. At present, the Act applies to Federal Capital Territory, Abuja and States that have domesticated it.

CHAPTER SEVEN:

CONCLUSION AND RECOMMENDATIONS

7.1 **Conclusion**:

Strictly, since 1992, every project for which environmental impacts assessment (EIA) is required must be executed in compliance with the process of assessment. Thus, from 1992 before commencing a project, the proponent must have complied with the environmental impact assessment of the project and an environmental impact statement (EIS) certificate issued to him by the Federal Ministry of Environment. The proponent is also required to submit the EIS certificate at the office of the National Environmental Standards and Regulations Enforcement Agency (NESREA). With copy of the EIS certificate, NESREA ascertains the conditions upon which the EIA of the project was carried out in order to ensure that the proponent complies strictly with the ascertained conditions in the execution of the project. Thus, unlike the Federal Ministry of Environment which drives the process of an EIA, NESREA drives the enforcement of executed EIA based on the conditions for which an EIS certificate was issued to the project proponent.

Similarly, every category of project for which an EIA was required or carried out before 1992 and after 1992 respectively, must necessary comply with presentation of its Environmental Audit Report to NESREA every 3 years, failing which the proponent is

sanctioned by the Agency. For the purpose of carrying out an environmental audit report, the project beneficiary goes to NESREA, to get a list of its accredited consultants.

It is important to underscore that the consequences of non-compliance with environmental impact assessment of projects that require same can be devastating on the social, economic, and environmental systems of a country or region, as well as the global ecosystem. Environmental disasters do not recognise man-made borders, but threaten the legacy left for future generations of a clean, healthy and supportive environment. Understanding this important fact is not only vital but pivotal to human corporate existence and the restoration of interdependent harmony among existents. All hands must be on deck to preserve it for the collective interests of mankind and other existents. Accordingly, the overlapping of functions and disharmony among agencies of government with respect to environmental impacts assessment and the necessary mitigation measures aimed at preserving the environment must be checked and the functions of each agency clearly stipulated, streamlined and defined to avoid the apparent institutional clashes among the agencies whose functions as enacted in their enabling laws seem to overlap. There is also the need for constitutional, statutory and institutional reforms to allow for easy ventilation of environmental violations claims in specialised courts, Federal and State High Courts. Thus, the recommendations made hereunder call for urgent consideration by the appropriate authorities.

7.2 **Recommendations**:

As considered hereunder, therecommendations are predicated on the need to ensure the protection of the environment through compliance with conducting requisite impact assessment and adherence to the legal and institutional frameworks required for that purpose. Regulatory agencies, as wellas human and corporate users of the environment also have roles to play. The following are therefore recommended:

1) **Need to enact Laws in conformity with Nigeria's development realities and level**:This recommendation is against the backdrop of the seeming copycat attitude adopted in drafting most Nigerian laws. Perhaps, it is predicated on the 'Let us be like other developed nations' syndrome. No doubt, this has been contributory to challenges and failures in the implementation of the laws (most of which are moribund and some of which are very advanced).It is therefore recommended that development process of Nigeria should be properly planned in stages, following which enacted laws on environmental impacts assessment of projects, as well as general development and protection of the environment must consider the country's peculiarities and conform to its peculiarities. This would help in addressing among others the problem of establishing an agency for enforcement of environmental standards, protection and development without adequate man-power and facilities for the discharge of the purpose; establishing the oil spill detection and response Agency, without fully equipping the Agency to carry out its functions effectively; and making a regulation that every vehicle in Nigeria must undergo annual emission testing, without adequate licensed facilities for that purpose.

2) **Need for Strict adherence to Environmental Impact Assessment:**Every authority including the government should adhere strictly to the systematic procedure for carrying out an EIA on any proposed development on the environment before securing an approval about the project. Thus, the provisions of section 14(2) of the EIA Act to the effect that projects over which government performs a duty or exercises power are exempt from impact assessment may affect the core aim of environmental sustainability. Consequently, it is opined that no matter the extent of exercise of executive powers, all authorities, including the President must ensure that environmental impact assessment is carried out in respect of any project which falls in that category. An amendment of that section of the EIA Act is recommended.

3) **Need to establish a uniform data bank on environmental issues:** In order to have a common drive or goal on environmental issues, there is need to have central data bank on environmental impact analysis. Although, absence of data is not a major set-back, because most of the collected data are in scattered forms in the various Agencies' archives; the set-back is rather the bureaucratic bottlenecks experienced in any efforts to access the data. It is opined that having a centralised data bank agency with zonal, states and local governments' offices or extensions will go a long way in tackling the problem of scattered/dearth of data for appropriate environmental updates/awareness, research, planning, protection and development.

Accordingly, the EIA Act will achieve its purpose better if it establishes or empowers an Agency to serve as both a data bank agency and autonomous agency where environmental impacts of projects will be assessed before transferring the supervision of the project to the specialised agency in that sector. The information or data collated in these data banks could also be launched electronically on the internet world wide web, where any person, who wantsto access them can freely do so, in the comfort of any location in the world without having the trouble of visiting the agency incessantly. Thisidea is cogent for proper archiving of information bothering on environmental impact assessment, environmental impact statement, environmental audit and project monitoring reports. The principles of good library practice if adopted will also be helpful.Consequently, employing librarians to manage the data bank centres will help in preserving research and reference materials in order to learn from past mistakes and avoid recurrence.

4) **Need to address duplicity of functions of environmental agencies**: This recommendation is important because among others, it would help streamlinethe power to regulate the environment with respect to oil spill, petroleum and gas discharge or explosion, by placing same on one particular agency to avoid duplicity of functions by

several agencies under the Ministry of Environment. Particularly, it is urgent to redefine the role of Department for Petroleum Resources (DPR) in Nigeria's oil and gas sector.

It is recommended that NOSDRA should be conferred with exclusive regulation, monitoring and control of oil spill matters when the oil is in its crude state, while DPR because of its age in the industry should be in charge of spill incidents arising from refined oil products. This thin line redefinition of roles can make a whole lot of difference and settle issues of conflicting roles in respect of oil spill matters.

5) **Need for NESREA Reform**: To enforce compliance with environmental impact assessment regulations and other extant laws, NESREA gets information basically through public complaints. Sometimes too, during compliance monitoring, its staff goes to the scene of operations to see what is happening. It is opined that the Agency must take proactive steps at ensuring compliance. Thus it should not sit and wait for public complaints before taking steps to monitor compliance; else, realising its objectives would continue to be a mirage. It is unlikely that many illiterates who do not know how to go about public complaints procedures/ protocols would be able to complain about the operations of companies capable of impacting their environment. Also, the fact that some of the poor illiterates could accept token compensatory payments and allow any kind of companies' operations is indicative of ignorance of any imminent danger or hazard associated with such operations.

Conduct of compliance monitoring is not often, but it is done routinely, based on the need and apparently in respect of companies whose identities have been known.[1169] It is suggested that the Federal Government needs to set up a task force with the primary role of monitoring both urban and regional locations of companies for the purpose of ensuring compliance with environmental laws and regulations. The said task force could be subsumed under NESREA and made to report to its directorate accordingly.

[1169] For instance Regulation 7, National Environmental (Standards for Telecommunications and Broadcast Facilities) Regulations, 2011 buttresses this view.

To verify authorisation of companies to operate, recourse should be had to the register of companies accessible at the Corporate Affairs Commission (CAC).[1170] Consequently, the Agency should liaise with the CAC in fishing out illegal operators; such that any operator who is not registered with the CAC for its kind of operation will be presumed a violator and made to face the full consequences of the law. This accords with the position of the law as decided in*Unipetrol Nig. Plc v Edo State Board of Internal Revenue*,[1171] that where a corporate personality commits contempt, the veil of incorporation will be lifted to commit its directors or employees, as the case may be in deserving circumstances. Thus, in appropriate circumstances, the corporate veil of such company could be lifted to unravel the brains behind the illegal operations and punish them accordingly.[1172]

To the researcher, there is at present no known reported case of any factory that has been permanently closed down for lack of compliance with any of NESREA's Regulations. The best that has been achieved is sealing of project or company sites which is unsealed once the penalty is paid. The siting of communications masts very close to residential houses, contrary to NESREA's Regulation is a case in view.[1173] Similarly, the truth that so many phone boots and accessories of the defunct NITEL have not been removed, in order to restore the environment to its natural state within 6 months of the abandonment is an 'I saw'. In this regard, the Agency must first start to execute and make good its Regulations by ensuring that the hitherto moribund NITEL hardware are cleared from the Nigerian environment. Furthermore, the incidents of building high rise structures and location of industries without the requisite permits and conduct of the EIA of such undertakings are indicative that the Agency is yet to cover its grounds on its

[1170]Established by s. 1 of the Companies and Allied Matters Act, (CAMA) Cap C 20, LFN 2004.
[1171] [2001] 10NWLR (Pt. 720) 167 at 174, paragraphs C – D.
[1172]CAMA, Cap C20, LFN 2004, s. 246(3); *IBWA v Sasegbon* [2007] 16 NWLR (Pt. 1059) 195 at 216, paragraphs E – H.
[1173] National Environmental (Standards for Telecommunications and Broadcast Facilities) Regulations, 2011, s. 5.

major functions. In light of the above issues, NESREA reform is advocated to address the issues accordingly.

6) **Need for Jurisdictional Balance between the Federal and State High Courts**: Apparently, owing to the difficulty of deciphering some of the cases in respect of which Federal High Court has exclusive over the general jurisdiction of the High Court, many deserving cases have been dismissed on grounds of instituting same in a court that lacked jurisdiction to entertain them. Consequently, an amendment is advocated to the provisions of section 251(1)(n) of the Constitution which confers exclusive jurisdiction on the Federal High Court with respect to many environmental claims. This recommendation underscores the need for both the Federal and State High Courts to have concurrent jurisdiction to determine environmental impact assessment claims and environmental rights, including degradation and pollution arising from oil spillages, mining and manufacturing activities. This would no doubt give effect to the provisions of the NESREA Act on the definition of 'court'[1174]Furthermore, there is need for the establishment of specialised tribunals to fast-track environmental impacts assessment cases. The jurisdiction of Magistrate court as was the position under the Oil Pipelines Act should be restored.

7) **Need for good town and regional planning to preserve the environment**: Planning[1175] is pivotal to the development and use of land[1176] in order to promote a systematic development of municipality in the interest of general welfare and prosperity of its people

[1174] S. 37

[1175] The history of Planning Law dates back to the aftermath of the Second World War. Ruined towns and cities which needed to be re-developed, and industry which needed to adapt to serve the peacetime market, also required land for development. There was a perceived opportunity and need to create a new and comprehensive planning regime which could impose some coherence on development. J Thornton and S Beckwith, *Environmental Law* (London: Sweet and Maxwell, 1997) p. 93.

[1176] J Rostron, *Environmental Law for the Built Environment* (UK: Cavendish Publishing Ltd, 2001) p. 39. In the UK, current planning policy guidance notes include: Green belts; Housing; Telecommunications; Nature conservation; Archaeology and planning; Coastal planning; Tourism; Renewable energy, Planning and pollution control; Planning and noise; Development and flood risk, etc. p. 42.

with greatest efficiency and economy.[1177] To achieve planning of any locality entails development of marked-out lands according to specific design, action, procedure or arrangement. The plan for development must therefore comply with stipulated dwelling, commercial or industrial use, density and open space pursuant to the enabling Act of state.[1178] A standard urban planning, which provides specific areas for residences, commercial activities and industrial/manufacturing activities respectively is recommended to preserve the environment and promote enforceability of environmental impact assessment.

8) **Need to adopt and uphold sustainable development in the use of resources and planning:** This must be the watch word of every company whose operations impact the environment. Every project, development and planning must consider sustainable development in decision making. Admittedly, the Nigerian National Policy on the Environment and Draft Objectives and Strategies for Nigeria's Agenda 21 are steps in this direction.[1179] It is however, opined that something more practical, actionable or proactive is required to be done rather than theoretically putting it on record. The problem has not been the absence of enacted laws but putting what is on paper into practice. Thus, activating the Nigeria's Agenda 21 with respect to the environment is highly recommended

9) **Need to enforce anti-gas flaring laws:** This recommendation advocates utilization and storage of natural gas,instead of flaring it. The Associated Gas re-injection Actshould become operative.It is perturbing that despite its enactment; this law is yet to become

[1177]In Nigeria, formal planning activity began with an Ordinance in 1902 which empowered the Governor of the Colony and Protectorate of Southern Nigeria to set up European Reservations. Through a series of Ordinances, which culminated in the Town and Country Planning Ordinance, No 4 of 1946, planning became legitimised as a State function throughout the country. A Fakolade, and HS Coblentz, *Community Development Journal*, Vol. 16, No. 2, 1981. < http://cdj.oxfordjournals.org/content/16/2/119.extract> accessed March 1, 2016.

[1178] Black's Law Dictionary, 6thEdn, 1150-1151.

[1179]Prepared under the auspices of United Nations Development Programme Support for Environment and Natural Resources Management Programme For Nigeria, the Draft Objectives and Strategies for Nigeria's Agenda 21 among others, seeks to: integrate environment into development planning at all levels of government and the private sector. It was submitted to Federal Environmental Protection Agency (FEPA).

enforceable in Nigeria, as gas flaring by oil companies has continued unabated. Although section 3 of the Act makes provision for prohibition of gas flaring, the proviso to the said section also permits a lee-way to flare gas ceaselessly, provided the flaring company pays the required royalty for such permit. This is the height of irresponsibility and deceit in the enactment of laws in Nigeria. The government must stand its ground to completely prohibit gas flaring, by making the royalties very punitive to discourage companies from flaring gas at all. Consequently, an amendment to the law is advocated to prohibit gas flaring completely.

10) **Offence and Penalty under the EIA Act**: The offence section stipulates a penalty of One Hundred Thousand Naira (₦100, 000.oo) or five years imprisonmentand in the case of a firm or corporation to a fine of not less than Fifty Thousand Naira (₦50,000.oo) and not more than One Hundred Thousand (₦100,000.oo).[1180] It is viewed that this penalty is grossly inadequate for violating strict compliance required for environmental impact assessment. This is why for example, gas flaring has continued unabated in Nigeria, despite the existence of a law that prohibits gas flaring, the Associated Gas re-injection Act.[1181] An upward review of the penalty stipulated in the EIA is recommended, to at least Ten Million Naira (₦10, 000,000.oo)

11) **Need to make oil spillage and violation of environmental impact assessment of required projects strict liability offences**: Predicated on the applicability of polluter pays principle, this recommendation should be tailored after the punitive United States Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which also applies the strict polluter pays principle.

[1180] EIA Act, s.60

[1181] Cap A 25, Laws of the Federation of Nigeria, 2004 and particularly s. 3 of the said law which prohibits gas flaring as well as enacts a proviso which gives a lee way for gas flaring on payment of an amount as may be prescribed by the Minister in charge of petroleum may from time to time prescribe for every 28.317 Standard cubic metre (SCM) of gas flared. This is the clear purport of a joint reading of s. 3(2) and proviso to the section.

12) **Need for education/ enlightenment**: An uninformed mind remains in perpetual darkness on contemporary issues, especially those bordering on the protection of the environment. In light of current global trends, it is recommended that native people, especially at the rural host communities where oil installations are located should be educated or rather enlightened on contemporary environmental issues bordering on oil installations and the need to discourage any one, no matter how agitated from blowing up the oil pipelines. This enlightenment would no doubt help to safeguard the environment from degradation due to oil spillages. For those in formal education, it is opined that contemporary environmental issues should be included in educational curricula from kindergarten to tertiary levels.

13) **Need to Finance the Agencies Adequately**: Undoubtedly, a lot of finance is needed to boost the operations and function of the environmental Agencies to enviable standard. Similarly, the staff of regulatory agencies must be provided with adequate trainings and befitting incentives. This will discourage them from giving to lazy attitude to work and bribery and corruption, the bane of Nigeria's development.

14) **Need for Payment of adequate and appropriate compensationto victims of environmental hazards**. This can be achieved by establishing a trust fund like the US Oil Spill Liability Trust Fund.[1182]By S.1004 of the US Oil Pollution Act, 1990, responsible parties to a spill at onshore facilities and deepwater ports are liable for up to $350 million[1183] per spill; and holders of leases or permits for offshore facilities, other than deepwater ports, are liable for up to $75 million[1184] per spill, plus removal costs. Consequently, in awarding compensation to victims of adverse environmental impact or

[1182]This Trust Fund is available to provide up to one billion US dollars per spill incident. It also increased penalties for regulatory non-compliance, broadened the response and enforcement authorities of the Federal government, and preserved States' authority to establish law governing oil spill prevention and response.

[1183] Equivalent to ₦113, 750, 000,000.oo (One Hundred and Thirteen Billion, Seven Hundred and Fifty Million Naira) assuming the naira-dollar foreign exchange rate remains at ₦325.00 per US dollar as at April 12, 2017.

[1184] Equivalent to ₦24, 375, 000,000.oo (Twenty Four Billion, Three Hundred and Seventy Five Million Naira) assuming the naira-dollar foreign exchange rate remains at ₦325.00 per dollar.

degradation, a highly punitive penalty against violators is recommended, in order to deter prospective polluters.

15) **Need for effective consultation between governmental authorities, proponents** and **host communities before executing any project capable of impacting their environment/land**. A situation where oil prospecting and mining companies would without due consultation with their host communities commence operations under the guise that ownership of all minerals is vested in the government is utopian and old-fashioned. Although guise is founded on some extant laws; the said laws did not divest customary ownership of land from the host communities.[1185]Thus, a synergy of the government, project proponent and host community before embarking on any project that may impact the environment is recommended.The collaboration must contain agreed terms on how the project would be executed in the interest and benefit of the host community, as well as the overall preservation of the environment.

16) **Need for Adequate publicity of the Agencies**: Admittedly, the Agencies are making efforts to do more on public awareness and education, for people to appreciate the need to forestall environmental degradation which affects economic activities generally.[1186] It is submitted that this intendment of the Agencies should be galvanised into action; as the existence of the various agencies charged with the protection of our environment must be adequately communicated to the Nigerian populace.

17) **Need to use local dialects or native languageinterpreters during seminars and public enlightenment on environmental impact issues in rural communities**: This will achieve better results of passing information to the people, thereby creating more awareness. Language is vital to communication and understanding. Thus, understanding what is being communicated gives opportunity of choosing to act in the right direction. It

[1185] S. 1(1)(2) of the Nigerian Minerals and Mining Act, 2007; S. 1 of the Petroleum Act, Cap. P 10, LFN 2004; and S. 36 (1-5) of the Land Use Act, Cap L 5, LFN, 2004.
[1186] Retrieved February 28, 2016 from http://thenationonlineng.net/%23/web2/articles/4736/1/We-keep-oil-companies-on-their-toes/Page1.html

was the instrumentality of language power that the early missionaries used in combating many heinous practices such as killing of twins, children that grew the upper teeth first, breached babies that were born through their legs, etc. The use of local dialect interpreters was helpful in passing the message across to the natives.

18) **Need to amend several provisions of the regulations made by NESREA**as follows:

i) The inclusion of 'oil and gas' as part of what NESREA should ensure compliance on in section 7 (c) of the NESREA Act is a misnomer and should be expunged. The said provision is not necessary; as environmental matters dealing with the oil and gas sector are governed by the National Oil Spill Detection and Response Agency Act and accordingly undertaken by the Agency created under it, that is the National Oil Spill Detection and Response Agency (NOSDRA).[1187]

ii) Meting out a punishment or penalty against a project proponent based on the 'opinion of the Agency', without more is anathema, nebulous and vague and capable of being misused.

iii) Review of an appeal against non-approval of an EIA report and commencement of the project by the Director-General of NESREA offends the principle of natural justice, and amounts to the Director-General presiding over a matter in respect of which he may have participated in the outcome leading to the appeal.

iv) From the various requirements of fees and charges, the Regulations seem to be money-based without accomplishing the actual purpose for which the Regulations were made.

v) Service of enforcement notice should either be at the registered office of a facility or any of its office and not 'at any of its registered offices', as erroneously couched in many of the Regulations analysed. This is because the law recognises only one registered office of a corporate entity. This registered office in most cases is the headquarters office, or the registered address of the organisation at its incorporation. Others could be branch offices.

[1187] NOSDRA Act s. 8(g)(s).

vi) Financial penalty in most of the Regulations for activities that cause so much adverse impacts is grossly inadequate.

vii) Payment of penalty based only on the allegation of an agency without further proof before a higher administrative body or court of law offends the principle of fair hearing.

viii) Exonerating an agency from liability arising from its negligence and misinformation is not in the best interest of the public. Many of the Regulations considered have disclaimer clauses to the effect that damage occasioned or resulting from reliance on the provisions of the Regulations does not impose liability of on the agency or the approving authority of the agency.[1188] The law on the order of mandamus, certiorari and prohibition on application to a court of competent jurisdiction must now be fully utilised in order to discipline erring staff of the agencies who aid in dishonest and fraudulent approvals of environmental impact statement or assessment; and where appropriate they should be subjected to both civil and criminal prosecution. Thus, the Environmental Impacts Assessment Act should be amended to conform to what obtains in China and South Africa; to in addition to project proponent, inculpate any person involved in the execution of any project capable of impacting the environment who does not comply with the requirements of the impacts assessment, including staff and personnel of the regulatory agencies. Furthermore, public interest litigation on issues of environmental impacts assessment should be enacted in the various laws and regulations in order to allow both affected and unaffected persons to seek redress in court over environmental impacts assessment violations. This is because I the long run, the impacts may escalate to affect those who were not immediately affected at the time of developing the project.

ix) There is need to increase the monitoring teams of the agencies.

x) The Construction Regulations is yet to be enforced for every construction work, and this trend is affecting infrastructural development and impacting the environment adversely in

[1188] See for example, Telecommunication Regulations, reg. 12.

terms of road construction, erosion, urban and regional planning and loss of lives due to collapsed buildings, and general disturbance and degradation of the ecosystem.

xi) There is need to provide for whistle-blowing against proponents who tend to boy-cot the environmental impacts assessment and audit of their projects at the required stages. In this wise, there should be adequate compensation by government for those whose report or evidence lead to conviction and recovery of specific sum for non-compliance with the requirements of an environmental impacts assessment buy a company or facility, including staff of a company dismissed for reporting the environmental impacts assessment violations of that company.

xii) The Federal Road Safety Corps should start impounding vehicles which violate the Regulations on emission of carbon monoxide, in order to give effect to the Control of Vehicular Emissions Regulations.

xiii) Need to have a national directory of certified assemblers, manufacturers and importers of vehicles. This would check the influx of fairly used '*tokunbo'* vehicles which more than expected usually violate the vehicular emission regulations.Furthermore, definition of 'assembler' in the said regulations should include road-side mechanics and emphasis on their vocational training should be given national attention in terms of reinvigorating the various technical colleges and vocational schools accrediting for the purpose of meeting the requirements of the regulations.

xiv) The involvement of security agencies in the process of environmental monitoring to ensure compliance with extant laws and regulations is very vital and result-oriented.

xv) The Soil Erosion and Flood Control Regulations are yet to achieve any success. To achieve the purpose of the Regulation, there is need for the agencies under review in this study to take proactive measures by partnering with the Ministry of Urban and Regional Development/Planning. Consequently, surveyors, as well as developers are also urged to checkmate their attitudes of sending their pupil trainees to plan an area without recourse to the topography for the purpose of erosion and flood control.

xvi) There is need for relocation of telecommunication masts which violate the Telecommunications Regulations, in order to comply to distance of the mast from dwelling residential houses and schools and the control of noise from generating plants of the masts.

19) **Need to amend several provisions of the regulations made by NOSDRA**as follows:

i) Accreditation for oil spill clean-up should be based on capability of contractors.

ii) NOSDRA Act needs to be amended to include the operations of the Civil Defence Corps as its functional armed patrol or surveillance team ready for face-off against aggressive illegal oil bunkerers.

iii) The phrase, 'best practicable technology currently available' with respect to the technology to use in oil spill containment or clean up should be delimited, because it is vague and prone to various views and interpretations. Accordingly, the method or technology required for remediation or clean-up must be clearly defined, for, example, bio-remediation. This is because, instead of using chemical dispersant, bioremediation of oil spills tough expensive remains the most environment friendly.

iv) The total responsibility of removal or clean-up of oil spill and payment of compensation to victims of the spill should be placed on the facility owner and operator, while the method of clean-up or remediation should be determined by the regulatory agency. This would checkmate the spillers from using the most cost effective option which may not be in the best interest of the environment and the entire ecosystem.

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Appendix:

General Template/ Components of the Guidelines for Conduct of EIA:

For any proponent to undertake a proposed project, certain structural components serve as a guide in preparing the report of an EIA from initial stage of preparation to the execution and decommissioning stages of the project. They are as follows:

a) Identification of interest to carry out a project;

b) Justification or reason for the proposed project;

c) Description of the proposed project;

d) Description the Environmental of the environment proposed for the project;

e) Analysis of associated and potential environmental impacts of the location chosen to execute the proposed project;

f) Analysis of sources of the associated and potential impacts;

g) Mitigation measures to be adopted at each stage of the project execution up to decommissioning stage;

h) Statement of the Environmental Management plan;

Checklist or summary of environmental issues to consider for the type of project:

i) Strategic consideration/ objectives of the project.

ii) Adequacy of baseline data: This is the description of the essential features of the projects site and its surroundings in relation to its effects on soil properties, vegetation, wildlife, topography, ecology, degree of degradation, hydrology, air quality, land tenure system, socio-economic or cultural value and population and distribution of labour according to sex and age, nearby community/ settlements, etc.

iii) Project activities capable of potential negative impacts, such as: land clearance method, site selection, preparation and construction, raw materials, irrigation, use of technology, pesticides and fertilizers, drilling activities, access roads, exploration of site and activities.

iv) Potential negative impacts with respect to loss of nutrients, raw materials, infrastructure, land tenure, migration of species, environmental degradation, crop and livestock production, and health hazards.

v) Description and characteristics of the impacts (beneficial and adverse) in the short term, long term, cumulative, local, regional, national, trans boundary and consider whether the impacts are reversible or irreversible.

vi) Mitigation measures/methods to be applied or used, such as waste management and disposal mechanisms, remediation plans after commissioning, appropriate technology integrated land use planning, land reclamation, mane pits closure, infrastructure rebuilding, local participation and controlled input of pesticides and fertilizers, and legislation and institutional mechanisms.

vii) Monitoring: This is done with respect to soil surveys for suitability indices of depth, PH, CFC etc., hydrology or water quality surveys, biochemical measurements, social surveys etc.

viii) Regulatory laws/ framework

General EIA Report Writing Format: It is laudable that all the Guidelines made pursuant to the enforcement of the EIA Act contain the general format for writing EIA Reports. The guide serves as a template for adaptation by any project proponent with regards to his proposed project. The format for an EIA report is outlined and presented as follows:

1) Table of Contents
2) Executive Summary
3) List of Maps
4) List of Tables, etc.
5) List of Acronyms
6) Acknowledgement
7) List of EIA Prepares

8) Introduction – covering the following:

(a) Background Information

(b) Legal and Regulatory Framework and

(c) Terms of Reference

9) Project Justification – highlighting the following:

a) Need for the project;

b) Value of the project, and

c) Envisaged or Possible Sustainability of the Project.

10) Project and/or process Description covering the following:

a) Type (eg food processing)

b) Input and Output of Raw Materials and Products

c) Location

d) Technological Layout

e) Production Process

f) Project Operation and Maintenance

g) Project Schedule

11) Description of the Environment as follows:

a) Baseline data acquisition methods

b) Study approach

c) Geographical layout

d) Field data

e) Climatic conditions

f) Air quality assessment

g) Noise level assessment

h) Vegetation cover characteristics

i) Potential land use and landscape patterns

j) Ecologically sensitive areas

k) Terrestrial fauna and wildlife

l) Soil studies

m) Aquatic studies

n) Groundwater resources

o) Socio-economic studies

p) Infrastructural services

12) Associated and Potential Environmental Impacts – analysed as follows:

a) Significant positive impacts

b) Significant negative impacts

c) Site preparation and construction impacts

d) Transportation impacts

e) Raw materials impacts

f) Process impacts

g) Project specific incremental environmental changes (if any)

h) Project specific cumulative effects

i) Project specific long/short term effects

j) Project specific reversible/irreversible effects

k) Project specific direct/indirect effects

l) Project specific adverse/beneficial effects

m) Project specific risk and hazard assessments (if any)

13) Mitigation Measures/ Alternatives – considering the following:

a) Best available technology

b) Liability compensation

c) Site alternative, location/ routes

d) No project option

After stating the mitigation measures, prepare and insert thereunder a table listing prospective impacts of the projects with the corresponding mitigation measures.

14) Environmental Management Plan and Performance Assessment – covering the following:
    a) Monitoring schedule
    b) Parameters to be monitored
    c) Scope of monitoring
15) Remediation Plans after De-Commissioning/ Closure/ Abandonment
16) Conclusion and Recommendations
17) References or Bibliography
18) Appendices.