CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

As a theme, environmental crime has for the most part been underemphasized in Nigeria. Despite episodic narrative attention in published literature, and legislation which have done little to stop the negative changes to the environment, environmental crimes in Nigeria is on the increase despite some legal provisions to protect the Nigerian environment. These crimes as harm or pollution to the environment committed basically by; Multi-National Oil Companies exploring and exploiting oil in Nigeria, Companies in solid mineral mining, as well as individuals whose acts pollute the environment and the waters by dumping waste in water ways, and also those who are involved in illegal mining and Felling of trees (deforestation), excavations, flattening of the hills (burrow-pit) uncanny disposal of industrial chemical wastes, burning and poor disposal of tyres, application of chemicals for fishing and so on and so forth. All these cause different forms of deadly environmental pollution which often ought to amount to different degrees of environmental crimes.

The available legislation on what could amount to environmental crimes appear to be begging the issue when it comes to criminalization of acts which amount to environmental crimes to the extent that some of the laws seem to be encouraging rather than discouraging environmental crimes in Nigeria.

Nigeria created various Agencies to take charge of the environment and its protection but there is need to strengthen the Agencies with the strong provisions of the laws on

what amounts to environmental crimes. Legislation ought to clearly spell out the procedure for prosecution. Thus there should not be any form of trivialization of environmental crimes. Moreover, it cannot be ruled out that many crimes to the environment result to pollution which invariably affects the health of human beings. For where pollution affects lithosphere (land) hydrosphere (water) or the atmosphere (air) it will surely affect human health and lives.

The major focus of this dissertation is on the impact of economic exploitation geared towards development as it relates to environmental crimes, which impact negatively on the environment, (air, land and water) such as lakes, streams, rivers, seas, oceans. This work is focused predominantly on those acts that violate current law.

Environmental crime refers to the perpetration of harms against the environment that violate extant laws. The term 'environmental harm' is often interchanged with 'Environmental Crime'. Environmental crime encompasses a broad range of activities that result to environmental harm. The first near environmental crime legislation was not enacted in Nigeria until 1990.

However, since then, a number of statutory instruments have been enacted to criminalise activities harmful to the environment; yet the various punishments under statutes remain inadequate. This work tries to examine the possibility of utilising experiences in other climes to make suggestions on how best Nigeria can improve on issues of using the laws to maximally protect her environment by putting out deterrent and adequate punishments to offenders of environmental protection so as to limit the crimes to the Nigerian environment.

Thus this research demonstrates the urgent need for the legislature at the National level to live up to expectations with regard to enactment of strict laws which will deal with some environmental crimes seriously as in other climes. Legislation definitely helps to nip issues of environmental crime in the bud.

Activities punishable under various laws are basically: unacceptable disposal of harmful waste, dangerous methods of fishing, abuse of water resources, oil and other forms of pollution of the environment. This research envisages that there is need for further statutory clarity on what amounts to environmental crime in Nigeria. The terms must be explicit and ought to be of strict liability whether in civil matters for payment of damages to victims of criminal prosecution by the State. Efforts to prevent or mitigate environmental crime appear lackadaisical on the part of various institutions that ought to take charge. It appears there is inadequate punishments for the abusers of the environment and for those found in breach of environmental laws. There is need to make clear provisions as to what amounts to environmental crimes to the environment as in other climes. In Nigeria, environmental matters are still treated with kid gloves and appear to be the weakest laws of the country especially when viewed from the perspective of the non-justicability of Chapter II of the Constitution of the Federal Republic of Nigeria 1999 which is treated as only Fundamental Objectives and Directive Principles of State policy. This is against present global shift on issues of environmental protection and criminalisation, prosecution and punishments on some adverse activities to the environment. The researcher intends to demonstrate the prevalence of environmental crimes in Nigeria which are not sufficiently captured by legislation and clear punishment prescribed for such

activities. There is also insufficient efforts to enforce the intendment of the micro provisions of existing statutes so as to prevent environmental crimes.

The shortcomings in confronting environmental harm bordering on crimes reveal that there is need for more vigorous protection of the environment by legislations; that there is need to adequate punishment for environmental crimes by anybody or institutions. This work intends to stimulate appropriate and adequate response and mechanisms for proper criminalisation and enforcement of punishment for environmental crimes. Thus this research will examine whether proper equipments of high technology are acquired and put into use by those who ought to apply such by law. Proper training of monitors, investigators, Prosecutors and Court Assistants are intermittently carried out and adequate punishment meted out upon convicts to accord with international best practices

1.2 Statement of Problem

It appears that most people have some idea of what and what amount to environmental crimes in Nigeria. It is so far the reason that solving environmental pollutions bordering on crimes is seen as government problems which those in authority ought to solve; thus despite the scanty provisions on environmental crimes protection the expected reportage on crimes to the environment and duties of the agencies, environmental crimes are on the increase on daily basis. Many of Nigeria's environmental problems are those typical of developing States. Excessive cultivation has resulted in loss of top soil, soil fertility and pollution. Increased failing of trees

has eroded the forests and forest reserves causing desertification. Between 1983 and 1993 alone, Nigeria lost 20% of its forest and woodland areas[1].

Further problems are found in the areas of oil exploration and exploitation, as well as exploitation of solid minerals. The frequency of oil spills which cause damage to land and water as well as gas flaring with the resultant atmospheric harm can never be over - emphasised. Bush burning which leads to atmospheric pollution and soil damage is still rampant. Dumping of toxic wastes in water affect fish farming, availability of potable water, aquatic lives as well as navigation. Nigeria was among the 50 nations with the world's highest levels of carbon monoxide emissions into the atmosphere which totalled about 96.5 million metric tons[2]. Water pollution is also a problem whether surface or underground due to improper handling of sewage and textile effluence. Nigeria has 221km of renewable water resources[3]. Any harm to the environment most times takes indeterminable years to manifest whether by atmospheric, lithosphere or hydrosphere poisonous substances pollution[4].

1.3 Aim and Objectives of the Study

The aim of this research is:

i. To encourage enactments of new Laws in Nigeria to accord with the State's duty to protect and ensure healthy environment in line with international best practices.

---

[1] United Nations Statistics Division" United Nations Statists Division, Retrieved 2012 -09-27

[3] K .T. Pickering and L. A. Owen, An Introduction to Global Environmental Issues (London Rootledge, 1994) p. 165

[4] A K Usman, Environmental Protection Law and Practices (Ibadan, Ababa Press Ltd 2012) p 136

ii. To apply the Laws to ensure proper application to ideal equipment and procedures on any usage of the Nigerian environment.
iii. To sensitise Nigerians on safety consciousness towards Environmental activities to prevent further crimes.
iv. To create awareness on need for institution of diligent prosecution mechanisms for Environmental crimes.
v. To sensitise on appropriate remediation of the environment due to crimes and victims compensation by Offenders in Nigeria.
vi. To propose establishment of Environmental Courts in the geopolitical zones of Nigeria and proper training of the Courts to be sensitive to Environmental matters.

1.4 Methodology of Research

The methodology employed in this dissertation are doctrinal and empirical. The methods adopted for the doctrinal are literature review of text book, statutes, regulations, journal articles, analysis of decided cases and access to internet sources. While the methods adopted for the non-doctrinal is field work based on quantitative and qualitative by analysis of the responses to reduced data and analysed in tables, figures and charts.

1.5 Research Questions

There is no doubt that the instant topic raises many questions which beg for answers considering the challenges in dealing with environmental crimes in Nigeria.

Nonetheless, in the course of this research, attempt will be made to provide answers to the under-listed research questions as follows:

1. Is the term environmental crime understood?
2. Does Nigeria have adequate laws to protect the environment from crimes?
3. Are those foisting with Environmental Protection in Nigeria properly equipped?
4. Are environmental crimes adequately punished using Nigerian Laws?
5. Should there be designated Courts for Environmental Crimes?

1.6 Significance of the Study

This research is most vital because for a long time, there has not been serious attempts to improve the understanding and response to environmental crimes. Environmental offences have been trivialised in Nigeria with ineffective punishments and thereby invariably encouraging persons who harm the environment. It is expected that the findings emanating from this research will contribute in filling the existing *lacunae* in the laws relating to the environment. It is envisaged that the findings will be useful to lawyers, law and policy makers so as to devise new legislations and strategies which will meet the challenges posed by environmental offenders. Also that the courts will be proactive like in other climes. The citizens will benefit when the justice of any action is met by the Courts especially in victim compensation strategies. The National Environmental Standards and Regulations Agency (NESREA), hopefully would become more effective. Thus ensuring effective protection of the environment. The work will expose the need to educate the Nigerian citizens on their urgent duties to protect the environment against damage by resort to

legal actions whether as public interest litigation or interventions by Non Governmental Organisations (NGOs).

1.7 Scope and Limitations of the Research

This work is premised in environmental crimes in Nigeria. The scope of this research is limited by geographical coverage to Abia State of Nigeria, knowledge of Respondents on environmental crimes as well as availability need of finances to cover more States in the study on the part of non-doctrinal research. The study is also limited on the doctrinal aspect due to dearth of literature on environmental crimes especially with references to Nigeria. The limitations are also to the fact that legislations on environmental crimes are haphazard and unclear as some laws will state that what ordinarily will amount to environmental crimes may be allowed; thus confusion of crimes to the environment.

The scope of this research is to critically examine novel concepts and new trends that amount to environmental crimes, importing the science of crime in distillation and application of apply emerging trends in one or two other jurisdictions. The major concern is to understand the legal context in which environmental laws are enforced, whether at Federal, State or Local Governments areas as well as the impact on the citizens. Also to examine the interplays between applicable laws and regulations in developed and developing countries criminology and enforcement mechanisms. The limitation is basically funding for field work and dearth of data as a baseline for assessment of the true Nigerian position on issues concerning environmental crime and protection.

1.8 Organizational Layout

This dissertation contains six Chapters. Chapter one is the introduction, which contains the background to the study, statement of problem, aim and objectives, methodology of research, scope and limitation of research, significance of the study, research questions, organisational layout and definition of key terms. Chapter two discusses the conceptual and theoretical frameworks as well as review of literature. Chapter three deals with some legislation and regulations on environmental crimes as well as its types, causes of environmental crimes. Chapter four analyses the work of the Agencies and attitude of the Nigerian Courts on environmental crimes issues as well as what obtains in other jurisdictions. Chapter five the summary and Discussions on the field work findings. Chapter six is the conclusion and recommendations .

1.9 Definition of Terms

For clear understanding of the research topic there is need to explain some of the key terms.

1.9.1 Crime

Crime is explained as a violation of law which is punishable as specified in the laws upon trial and conviction. It is also an act of serious moral wrong doing[5]. Crime is a particular form of deviance aimed at violating existing laws of a give community or society.

---

[5] I Brookes, The Chambers Dictionary, (India, Harrap Publishers Ltd 2006)p. 358.

Crimes have been assigned different meaning by different schools of thought as expressed by different authors. But there has not been a single generally accepted definition of crime.

A crime is a legal wrong for which the offender is punished at the instance of the State. Crime is an act or omission involving breach of a legal duty punishable by indictment, in the public interest. In Nigeria crime is a legal wrong which can be followed by criminal proceedings and which may result in punishment. Essentially, a crime is a conduct which the State decides to prevent by threat of punishment and through criminal proceedings.[6]

In Nigeria, the word 'offence' has been used in both the Criminal Code and the Penal Code Section 2 of the Criminal Code (cap C 38 LFN) defines offence as "An act or omission which renders the person doing the act or making the omission liable to punishment under the Code or under any Act or law". The Penal Code provides where by any provision of any law of the State, the doing of an act or the making of an omission is made an offence, then such acts or omission becomes crime.[7]

1.9.2 Environment

Environment simply refers to the atmosphere (air), Lithosphere (land) and Hydrosphere (water). It is the whole complex of physical, social, cultural, economic and aesthetic factors which affect individuals and communities and ultimately determine their form, character, relationship and survival.[8] It means all which

[6] A A Isiaka & E F Okpaphor; Concept of crimes in the Administration of Penal Justice in Nigeria: An appraisal. Nnamdi Azikwe University Journal of Internal law and Jurisprudence Vol. 9 No1(2018) p. 246.
[7] Cap 89 Laws of Northern Nigeria 1963, law No. 4 of Kaduna State, 2002.
[8] J G Ran and D C Woosten, Environmental Impact Analysis Handbook of 1980 quoted in our Common Environment by By C O Ajuzie (Lagos University of Lagos Press, 2012)p 12.

surrounds man and awaits his dominance, exploitation, and control for the accumulation of wealth.[9]

It is the totality of physical, economic, cultural, aesthetic and social circumstances which surround and which also affect the quality of life of the people.[10] It is also defined as 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.[11] It is the sum total of the surroundings in both biotic and abiotic factors which influence how man, animal and plants live and interact amongst themselves as well as non-living. It is the abode of humans, plants and animals[12].

The problem of an optional use of the environment and its protection originates from its nature of public good and its characteristic of non-excludability and non-rivalry[13] In some cases the main reason for harming the environment in the saving gained by avoiding a costly compliance to the regulations which are in place for protecting the environment. Individuals follow self-interest and thereby breach environmental law, and over exploit the environment with universal harm for future generations[14].

1.9.3 Environmental Crime

Environmental crime is a behaviour harmful to the natural environment and its population. That is punished with criminal sanctions according to the nature of the

---

[9] R A Dantler, Urban Problem Perspective and Solutions (Chicago, Rand Menally College Publishing Co. 1977) p. 114.

[10] L Atsegbuna, V Akpotaire and F Dimowo, Environmental Law in Nigeria Theory and Practice (Benin City, 2nd Edn. AMBIK Press, 2010) p. 96.

[11] Section 39 of National Environment Standards and Regulations Enforcement Agency (NESREA) Act 2007.

[12] I A Omaka, Municipal and International Environmental Law, (Lagos, Lions Unique Concepts, 2012)p.1

[13] N. Siebert, Environment quality as a public good. In Economic of the environment: theory and policy; Berlin / Heidelbery.

[14] Guisseppe Di vita p.12.

protected species and the type and magnitude of present and future damage.[15] Environmental Crime encompasses targeted acts in violation of any law for protection of the Environment which includes, the air, land and water, and which are punishable as stipulated within the law, as an offence. It can be further explained as an offence or illegal activities committed individually, or as a corporation body or in an organised manner (syndicated) without any consideration to protection of the environment and which is punishable by law upon conviction. Environmental Crimes are difficult to define but generally cover acts and omissions that violate Federal, State and Local Environmental laws and standards. It covers acts that cause significant damage, harm or risk to the environment and human health in breach of environmental legislations.[16] Similarly, some people view any activity that has a harmful to simple word effect on the environment as environmental crime[17]. The term "environmental crime" from a legal point of view is a crime against the environment or the violation of an environmental law[18].

---

[15] Guiseppe Di Vita, Environment Crime Encyclopedia of law and Economics springer science 4 business media New York 2014. Do 10.1007/978 – 4614 – 7883-6_ 560 – 1.
[16] M Fagbongbe, Criminal Penalties for Environmental Protection in Nigeria, A Review of Recent NIADS Journal of Environmental Law Vol. 2 2012 Pp. 145
[17] S Bricknell, Environmental Crime in Australia, AIC Reports, Research and Public Policy Series 109, 2010 p. xi
[18] M Clifford and T.D. Edwards; Defining Environmental Crime, In: Clifford M(ed) Environmental Crime; enforcement Policy and Social responsibility, Aspen Publishers, Gaithersburg, pp 121- 145

CHAPTER TWO

CONCEPTUAL / THEORETICAL FRAMEWORKS AND LITERATURE REVIEW

2.1 The Concept of Environmental Protection by Law

Human beings are part and parcel of the environment yet human activities cause so much damage to the environment which a times amount to crimes. Such activities of human beings have ripple effects on the environment either positively or negatively. The obligation to protect and improve the environment by adoption of an environmentally friendly attitude by human beings will not only safeguard the present generation but also future generations. Such safe environment can only be achieved through careful planning and development of a legal framework for management of the resources of nature[19] whether as land, air and water, as well as consideration for sustenance of plants and animals of which human beings are key. Therefore, it is a noble mandate that human beings and nature must work together for the development of any society. The former President of the United States of America[20] posited that: "any throwing out balance of the resources of nature throws out of balance lives of human beings." The inter-dependency of the relationship of all the components of the environment can be summed up by the facts that human beings breathe in oxygen for survival and sustenance which is a by-product of plants. Whereas, plants take in carbon dioxide for growth and development which also is a by-product of human respiration. In furtherance of the above, Yalaju[21] a scholar noted that there is a duty

[19]A.C. Osondu, Our Common Environment, Understanding the Environment, Law and Policy (Lagos, University of Lagos press, 2012) pp – 180 -194
[20] Franklin Delano Roosevelt, President of the United States, (1933-1945)
[21] J. Yalaju, "Management of Waste and Protection of the Environment" (2006) Vol.182 JPPCL, 180

incumbent upon all managers of any community to preserve the integrity and purity of the environment.

The relationship between the environment and human beings is well established in Paragraph 1 of the preamble to the Stockholm Declaration which proclaims the relationship thus:

> Man is both a creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of human race...through rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale...

In order to achieve positive transformation of the environment, environmental rules, guidelines, strategies, standards and remedies are made to combat desecration of the environment and maintain equilibrium between the activities of the human beings and ecosystem.[22] The foregoing is what we refer to as environmental protection. One of the aims of this research is to examine the relationship between environmental harm and/or crime prevention by ensuring adequacy of the laws for protection of the environment and stipulated punishments to curb or deter environmental crimes. What readily comes to mind is how in the dynamics of exploitation of nature within a given environment law will be employed to control pollutions which amount to crimes in relation to any given environment in the Nigerian nation. . For example, how will law enforcement agents deal with forms of toxic pollution? Does it relate to conceptualizations and direct value judgment? Where does the precautionary principle fit in? Who exactly is the victim of environmental crimes? How should

---

[22] L. Atsegbua and others, Environmental *Law in Nigeria, Theory and Practice,* (Benin, Ambik Press, 2009) p.4.

transnational environmental crimes be dealt with? The novelty was seen in the judgment of the Trail Smelter's case.

It is a truism that much is not known of the dynamics of environmental crime, consequently, very little attention has been paid to the subject matter domestically in Nigeria. The gaps identified by the researcher especially in the laws and punishments for environmental crimes reinforced the determination to embark on this research so as to highlight the existence of environmental crimes in Nigeria and given support to modalities aimed at curbing or preventing environmental crimes.

Another concept of protection of the environment gave rise to environmental law which law originated as a collection of rules that developed sporadically as piece meal responses to specific environmental problems in different parts of the globe and has presently achieved coherence[23]

Another concept on the development of environmental law is the tidal wave of public opinions worldwide urging a consented global initiative to combat the growing threat to the earth by environmental degradation. Thus the notable 1972 United Nations International Conference at Stockholm where the Stockholm Declarations[24] and reaffirmation of States responsibility to ensure safety of the particular State's environment and that other States from whatever activities embarked upon for any reason but could impact negatively on the environment.

2.2 Theoretical Framework of Environmental Protection

[23] U.D. Ikoni, An Introduction to Nigerian Environmental Law (Lagos, Malthouse press limited 2010)p.241.

[24] Of 21 Principles relating to various expectations on protection of the environment were by the United Nations so as to make the planet earth safe by protection of her environment in totality.

The aim of the Stockholm Declaration is to promote environmental conservation by good management, research and co-operation and gave rise to series of United Nations environmental programmes (UNEP). It must be noted that the Stockholm[25] Declaration established a working guide under some of its following principles:

Principle 1: Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Principle 2: The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Principle 3: The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.

Principle 4: Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat which are now gravely imperilled by a combination of adverse factors. Nature conservation including wildlife must therefore receive importance in planning for economic development.

Principle 6: The discharge of toxic substances or 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

[25] A.F.L. Field, International Economic Law (Oxford, Oxford University Press, 2002) p. 298.

or irreversible damage is not inflicted upon ecosystems. The just struggle of the people of all countries against pollution should be supported.

Principle 7: 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 interfere with other legitimate uses of the sea.

Principle 8: Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.

Principle 15: Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all. In this respect projects which are designed for colonialist and racist domination must be abandoned.

Principle 21: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 22: States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

Principle 25: State shall ensure that international organisations play a co-ordinated, efficient and dynamic roles for the protection and improvement of the environment.[26]

The chairman of Stockholm Conference Maurice Strong, in his opening statement at the United Nations Conference on the Human Environment1972 stated thus:

> we have made a global decision of immeasurable importance to which this meeting testifies; we have determined that we must control and harness the force, which we ourselves have created ... we wish to advance – not recklessly, ignorantly, selfishly and perilously as we have done in the past but with greater understanding, wisdom, and vision... we do not have to believe in the inevitability of environmental catastrophe to accept the possibility of such a castastrophe... our subject is the human environment. Broadly interpreted, the Human environment impinges upon the entire condition of man, and cannot be seen in isolation, and poverty, injustice and discrimination, which remain abiding social ills on planet earth.[27]

There was a United Nations 1992 Earth Summit at Rio de Janeiro, at which world leaders from about 150 countries converged to fashion out ways of dealing with problems posed by these developments and also to agree on measures to stem further deterioration of the earth's environment. These efforts at combating the deleterious effects on the earth's environment on man's activities must engender attitudinal changes towards protection of the environment. In a book[28] the writer quoted Vice President Al Gore of United States America as presenting this paradigm shift thus:

> "[We] can prosper by leading the environmental revolution
>
> and producing for the world market place the new products

---

[26] M.T. Okoroudu – Fubara, Law of Environmental Protection (Ibadan, Caltop publications (Nig) Ltd 1998) pp. 916-920.

[27] <https://www.mauricestrong,not/indexphp/speeches - remarks3/103-stockholm> Accessed 25/10/2019.

[28] F. Cairneross , Green Inc: A Guide to Business and the Environment (Island press. Washington DC, 1995) p. 197.

and technologies that foster economic progress without environmental destruction"

Development planners at international and national levels have also reflected this epochal paradigm shift. Thus some of the principles of the Rio de Jainero Declarations are as hereunder stated:

Principle 1 - Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature

Principle 3 - The right to development must be fulfilled equitably developmental and environmental needs of present and future generations.

Principle 4 - 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.

Principle 7 - State shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities.

Principle 8 - To achieve sustainable development and a higher quality of life for all people, State should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate policies.

Principle 10 - Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.

States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 11 - States shall enact effective environmental legislation, environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and unwarranted economic and social cost to other countries, in particular developing countries.

Principle 13 - States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Principle 14 - State should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 15 - In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Principle 16 - National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due

regard to the public interest and without distorting international trade and investment.

Principle 17 - Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a signification adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 19 - States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Principle 20 - Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

Principle 21 - The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

The 1972 of United Nations Conference on the environment, which stressed the fact that environment and development are two sides of the same coin. It is within the context of these international developments that changes in environmental legislation in Nigeria can properly be examined. The previous legislations or laws appear lackadaisical on protection of the environment in the country.

.

Resulting from the new philosophy of sustainable development is the question of reconcilability or otherwise of environmental concern and the goals of business.

The question is whether Nigeria as a nation considers the present environmental law provisions carry on, no matter the quantum of pollution so long especially with none deterrence punishment to harms to the environment as the accruing revenue is beneficial to the government guaranteeing sustainable development for the present and future generations? It is obvious that if environmental crime is allowed to go on unabated and uncurbed that Nigeria's environment will be destroyed. Therefore, the sooner Nigeria accords really with the will to protect the environment the better for all thus the purpose of this dissertation.

A community reading of these two declarations actually informed Nigeria's laws on the environment since 1990 to the extent of attempting to criminalise some pollution done to the environment as harm or crimes. It also led to the formation of FEPA 1990.

No doubt some laws exist in Nigeria which criminalized some acts and omissions, however, they are obviously inadequate considering the in-effectualism as the crimes go on unabated. Therefore need to make stiffer laws and punishments to protect the environment from crimes. Ecological sustainability as of necessity must drive economic interests. For example, the strengthening in Laws in relation to used electrical and electronic equipment (UEEE) in Nigeria may force the shippers never to ship harm to the environment products to Nigeria. Else the consequences will be meted out on the shippers or importers and thereby protect the environment.

Environmental crime prevention is aimed at curbing its ramifications on the society against the balance of personal and business liberty so as to guarantee sustainable development.[29]

---

[29] A. Sulton, A. Cheinrey & R. White, Crime Prevention; Principle, perspectives and practices, (2008 Cambridge University Press Melbourne)p. 192.

2.2.1 Particular Theories of Environmental Crime

It is necessary to explore some theories for better understanding of why serious degradations amounting to harm still occur despite the globally acclaimed protection of environment and existing laws and institutions in Nigeria in that respect.

The theories in this work will distill and comprehend the nexus between existing laws and need for new laws using the theorical application of behavioural tendencies of all arms of government, corporations, individuals and International Communities.

2.2.2 Social Ecology Theory

Here economic and social[30] inequality are used to rationalise abilities and inabilities of human beings to adapt and change ways towards environment which will protect the environment and make it better for human beings as part of nature. That the law should be flexible to respond to human creations and needs in practical terms while focusing on protection of the environment.

Social (or human) ecology may be broadly defined as the study of the social and behavioral consequences of the interaction between human beings and their environment. It specifically explores the causes and consequences of processes of segregation—the emergence through selection of environmental differentiation along key dimensions such as population composition and land use. It investigates how exposure to different environments (area- and place-based differential social organization and activities) influences human development and action. The social

[30] Per-Olof H. Wiksfrom in Social Ecology of crime . The role of the environment in crime causation, Do1: 10.1093/oBo/9780195396607-0027 ; Internationles hardbuch der kriminolgic, walter de Griyter, Berlin, 2007.

ecology of crime is the study of one particular behavioral outcome of these processes, the violation of rules of conduct defined in law. It focuses on the role of the environment in the development of people’s differential propensity to engage in crime and their differential exposure to settings conducive to engagement in acts of crime. Although the label “social ecology of crime” is often used in reference to studies of cross-national, regional, intercity and urban-rural differences in crime, its prime concentration has been on researching and explaining variation in crime within the urban environment. It is therefore not surprising to find that the most important theoretical and empirical contributions of this perspective emanate from the study of urban areas. An ecological perspective (defined as a pure environmental approach) is often contrasted with, and sometimes regarded as being in opposition to, an individual (psychological, biological, genetic) approach to the study of crime causation. However, the advancement of a fully developed ecological perspective on crime (a full understanding of the role of the human-environment interaction in crime causation) requires a better integration of environmental and individual approaches in the study of crime causation.

2.2.3 Economic Theory

This theory focuses on distribution of resources between classes which has been proven to be inequitable. Thus encourages capitalism which is in real terms careless about the environment with resultant perpetuation of crimes. Furthermore, this theory posits that the quest by human beings for economic growth comes with grave consequences on the environment. How lack of achievement to own dream property will lead to illegitimate innovative means to prosperity. Thus officers of corporation

such as Multi-National Oil Corporations (MNODCs) or International Oil Companies (IOCs) in Nigeria may it to such innovations to abandon their moral obligation to protection of Nigerian environment.[31] This is aptly demonstrated in the continuous flaring of gas in the Nigerian environment till date. Thus urgent need to actually criminalise gas flaring in its entirety. The associated gas re-injection Act and environmental Impact Assessment (EIA) Act befitting provisions must be fully implemented. The Courts are to guarantee the Implementation by delivering judgments which will deter pollution of Nigeria's environment with ignoring by corporations and individuals. The technicality judgments and award of pastry 'sums in damages encourages rather than deter polluter from carrying on business as usual. The judgments in other climes which will be discussed later aptly demonstrate deterrence judgments as well as polluter pays principle application even restitution and victims compensation.

2.2.4 Strain Theory

This theory demonstrates the relationship between criminology and economic or material prosperity. This theory shows the criminological aspects of environmental crime whereby innate thoughts and genes in individuals encourage them to go on to committing crimes. Thus exposing the need to fashion laws that will deter environmental harm as well as put in place proper mechanisms for enforcement. Only then can it be said that protection of the environ is guaranteed or stemmed.

2.2.5 Some Other Forms of Theories

[31] M. Clifford and T. D. Edwards, Environmental Crime (Burlington, USA 2nd Edn., Jones and Bartlett Learning 2012) p. 32

There are also some other categories of theories on environmental issues based exploitation of resources. Often times the corporations exploiting aim at maximum utilization of resources for profit without any form of responsibility and results to environmental crimes being ignored. This research aims to ensure that any entity or person responsible for any crime committed in Nigeria's environment by corporations, International Oil Companies, Nigerian Companies, individuals are lead to prosecuting environmental crimes.

2.2.6 Anthropocentric Theory

The foundation of the above theory or belief has been argued by many as having arisen from the book of Genesis 1:28[32] which states thus:

> And God blessed them, and said unto them, be fruitful and multiply and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowls of the air, and over every living thing that moveth upon the earth.

According to this school of thought, the environment and all that is within it was made by the creator and indeed exists by human beings use and therefore it must be exploited to its fullest. The anthropocentric philosophy embodies three distinct elements namely:

Resource exploitation Maximum capacity utilization; and No responsibilities.[33]

The 1st principle of resource exploitation states as follows: that the available natural resources should be exploited to the fullest for benefit and advantage of humanity. It goes further to posit that there could be no economic growth and development if

[32] Holy Bible (King James Version, 2001)
[33] P.A.K. Adewusi, The Environment: Law and Management in Nigeria, (Lagos: Hybrid Consult Publishers Ltd, 2011), 18-20

sovereign nations are not allowed to exploit natural resources in their territorial enclaves. The second principle implies that all natural resources should be maximally used, and only when there is maximum utilization can a nation achieve economic independence and development. The 3rd principle argues for the utilization of natural resources for the sake of the present generation only, and not to bear the responsibility of the future generations. This goes against the position of the World Commission on Environment and Development (WCED) report of 1987, the Brundtland report which defined sustainable development as "the development that meets the needs of the present without compromising the ability of the future generations to meet their own needs".[34]

2.2.7 Ecocentric Theory

The ecocentrists are in complete opposition of the total domineering influence of human beings on the environment. They rather suggest that humanity and the environment are partners in a symbiotic relationship. Accordingly, it is believed that protecting and safeguarding of the environment is not just a fledgling concern; but an unconditional genetic mandate without which human beings would fail to authenticate their existence. In support of this position, the Rio Declaration also emphasized the ontological (the science that deals with the principles of pure beings) concern of human beings to protect the environment and states that; "Human beings are at the Centre of concerns for sustainable development; they are entitled to a healthy and productive life in harmony with nature."[35] Thus it only through combined

[34]Supra at p. 27
[35] Principle 1 of the UNCED, 1992

efforts on the part of man is it possible to protect and fight for the sustenance of the environment.

The damaging effects of human activities can be evidenced in the following cases. In the case of Nweke v Nigerian (AGIP) Oil Co. Ltd,[36] there was pollution on the farmland of the plaintiff including his 'juju' shrine, caused during the defendant's exploration for crude oil. Pollution could also be caused by the seeping of sewage from an enclosure, introduction of chemicals into the water, dumping of waste, oil spillage among others capable of destroying the aquatic lives and contaminating of drinking water sources as observed in S.P.D.C. v Otoko & Ors,[37] where oil spillage from acoastal trunk pipeline resulted in the contamination of two wells owned by Andoni community in Rivers State rendering the water undrinkable.

The Stockholm Declaration took care of the present condition of the world and arrived at the conviction that environmental protection is a precondition to the enjoyment of internationally guaranteed human rights, especially the rights to life and health. Hence, Federo v E. K[38] wrote that the way out of the impending imbroglio was a transition from unsystematic disruptions of the environment to transformation with plans to increase protective strategies for its effectiveness in the interest of mankind.[39]

On the other hand, there are others who believe that the environment is not at risk and is meant to be exploited at all cost by human beings. One of such proponent is Norman Boarlang who held a contrary view to environmental protection. He

---

[36](1976) Vol. 9-10 101 (SC).
[37] [1990] 6 N.W.L.R. (pt. 159) 693
[38] The Interaction Between Society and Nature, Moscow, 1972 p.76
[39]*Supra*

admonished some United States of America’s environmentalists and conservationists who protested against the use of Dichlorodiphenyltrichloroethane (a colorless, tasteless, and almost odorless crystalline chemical compound, an organochlorine originally developed as an insecticide or pesticide, and ultimately becoming infamous for its environmental impact). According to him, people who embark on protest to end the use of agricultural chemicals, such as pesticides and fertilizers without giving thought to the end result of poor agricultural yields which may be “starvation and political chaos that will plague the world in future.”[40]

2.3 Literature Review

For this research, a selection of literature on Environmental Law, the environment, environmental crime and environmental litigation are reviewed from text books, journal articles etc containing past scholarly works. This literature review is necessary to provide a proper appraisal of past works by scholars on major issues relating to environmental, degradation or harm (crime) and its implications for the Nigerian environment. The literature review exposes the fact that writers in Nigeria with a few exceptions have always discussed environmental crime in a peripheral manner under the broader topic of the environment and environmental law without ascribing a separate identity and attitude to environmental crime Specific attention ought to be drawn to the problem of environment degradation / crime in Nigeria.

[40] Norman Boarlang, UNESCO Courier, February 1972 UNESCO, Paris, 1972, p.12

A Nigerian author Okorodudu-Fubara [41] discussed examined policies, laws and agencies including the Federal Environmental Protection Agency (FEPA), the main agency then for the Nigerian environmental protection. The author espoused exploitation, conservationism and protectionism with reference to Nigeria's environment. She touched also on the interdisciplinary nature of environmental law as it deals with human beings and the world they inhabit in terms of limitation to human activities. The work did not discuss criminality of some human activities which this research intends to discuss.

Usman,[42] wrote copiously on the newness of environmental law. He pointed out the fact that environmental offences are committed in desolate and isolated places which create difficulty of detection. The author emphasized the need for appropriate law and necessity for good surveillance mechanisms to track environmental offenders in accordance with new laws with proper enforcement of the laws. He also talked about global warming and green house effects as well as the interconnectedness of the elements of the environment with its effects on humanity as well as analysis of some decided cases. Instructively in his work, is the analysis of the Gaia hypothesis the chaos theory. Still, he discussed the cost-benefit of environmental and economic principles with trade permits especially in developing countries which affect the environment. He did not mention environmental crime nor its effects and solution which the researcher intends to deal with in comparism with international best practices.

---

[41]M.T. Okorodudu-Fubara, 'Law of Environmental Protection: Material and Texts (Ibadan, Latop Publications Nig. Ltd, 1998) pp 1- 138

[42] A.K. Usman, 'Environmental Protection Law and Practice' (Ibadan, Ababa Press Ltd, 2012) contained 8 chapters.

Osondu[43] discussed the general meaning of environment, types or classifications of environment and the concepts of environment. The author distilled environmental problems and their effects on human beings especially the resultant climate change. He also analysed the principles of co-operation and participation required in dealing with environmental protection. The author discussed the various world bodies relating or championing various mechanisms for protection of the environment. These include United Nations and its sub-bodies. the World Trade Organisaion (WTO), the Food And Agricultural Organization (FAO), World Health Organization (WHO) and the World Meteorological Organization (WMO). He opined that these bodies function to ensure secured environment for the healthy existence of plants and animals including human beings. Furthermore, he examined political commitment to environmental protection. He analysed the need to protect plants and animals and examined the common law approach to environmental protection. However, the author did not write on environmental crime on which the current researcher is focused on.

Clifford and Edwards,[44] they traced the history of environmental movement in the United States of America. They examined theories on crimes and environmental criminology, legislations, investigations and enforcement of laws against environmental crimes,. Furthermore, the authors discussed International environmental issues and the complexities of environmental offenders, but failed to refer to Africa in general and Nigeria in particular. This will form the major platform of discussion in this research.

---

[43] A.C. Osondu ' Our Common Environment, Understanding the Environment, Law and Policy (Lagos, University of Lagos Press, 2012).
[44] M. Clifford and T.D. Edwards Environmental Crimes, USA(2nd Edn Jones and Bartlet learning, 2012).

Ikoni[45] wrote copiously on nature and concept of environmental pollution and protection. The author discussed urban settlements and town planning with the attendant liabilities for damages. He also examined oil pollution of the environment and development of international environmental law for a healthy environment.
Further, he identified criminal liability for environmental harm with specific reference to liability for damage caused by oil pollution. The work identified statutory instruments that appear to criminalise environmental harm and discussed four statutes in a summary form. The author identified criminal liability with reference to oil pollution; though the work has to be acknowledged for its contribution, it is apparent that there is a need for more robust discussion on crime against the environment. The paucity of statutes discussed by the author makes it more desirable for further academic exploration.

Adebayo[46], espoused much on evolution of environmental law, regulatory agencies, environmental pollution and degradation. He examined types of environment as well as remedies for pollution including trans-boundary long range solution. The author further examined protection of biodiversity, global warming and ozone layer depletion as well as conservation of natural resources and sustainable development. He also analysed impacts warfare on environment issues but did not discuss criminality of environmental pollution. This will be addressed by the researcher in this work.

---

[45] U.D. Ikoni 'An Introduction in Nigerian Environmental Law, (Lagos Malthouse Press Ltd, 2010).

Oke,[47] wrote extensively in energy resources, management and international environmental law protection where he stated that developing countries (to which Nigeria belongs) deliberately relax their environmental regulations due to investment quests. This, according to him will result in monumental environmental damage based on recklessness in exploration and exploitation activities. The author explored establishment of environmental insurance as a mechanism for ensuring clean development mechanisms (CDM) in line with global environmental facility (GEF) to ensure adequate funds for protection of the environment. He also wrote on polluter pays principle, but did not write on crimes committed on the environment which invariably affects lives of human beings and other living things. This aspect will be incorporated in this research and apt recommendations offered.

Segger and Khalfan,[48] wrote on the relationship between international environmental law and sustainable development law. Note that many multilateral environmental agreements (MEA) have two objectives. The learned authors emphasized that the agreements focus on both conservation and protection of the environment by sustainable development strategies used /or sustained economic growth. However, nothing was written on environmental crime and its preventive measures in the quest for economic growth. The researcher intends to emphasise this aspect in this work.

Olawuyi[49] undertook a detailed narrative of the history and development of environmental laws and regulations in Nigeria. He further discussed air, and water

---

[47] Y. Oke, Nigerian Energy and Natural Resources Law: Notes and Materials(Lagos, Princeton & Associates Publishing Co. Ltd 2016) .

[48] M C Segger and A Khalfan, 'Sustainable Development Law, Principles, Practices and Prospect' (Oxford University Press, 2006) pp. 78, 346

[49] D.S. Olawuyi, The Principles of Nigerian Environmental Law (Ado-Ekiti; Afe Babalola University Press, 2013) pp 1 -363.

pollution either by chemicals or hazardous waste. He analysed the environmental problems of the Niger – Delta region of Nigeria with emphasis on the sources of pollution to the environment despite the laws and policies. He discussed environmental planning procedures, and dealt with environmental rights in line with international environmental laws. The author pointed out efforts to criminalization of environmental harm in the statutes and regulations which were enacted after the Koko toxic waste saga in Nigeria 1988.

He also identified and discussed the national policy on the environment which advocated the establishment and adoption of adequate environmental standards, monitoring and evaluation mechanisms as well as importance of environmental impact assessment for any proposed activities which may negatively affect the environment. The author expressed integration of environmental concerns into economic decision making, and employment of environmentally friendly technologies to natural resources management. However, there is no specific or detailed identification of environmental crime as a new concept in international norm which has major impact on the application of existing environmental statutes in Nigeria. The need therefore becomes intense to x-ray that aspect of environmental problem that has not been given adequate attention.

The author discussed environmental rights as human rights as contained in various human rights instruments. He discussed the polluter-pays principle (PPP) which was effectively summarised by the United Nations (UN) Rio Declarations on environmental law development. The Deceleration specifically states that “the polluter should in principle bear the cost of the resulting pollution, with particular

regard to public interest. He posited that the p. p.p. has remained an important foundation for domestic and international law and has been adopted in many treaties such as: the Helsinki Convention on the Protection of Transboundary Watercourses and International Lakes; the Barcelona Convention for the Protection of Marine Lives. The author discussed the European adoption and establishment of a common framework where the polluter pays for damage done to animals, plants, natural habitats and water resources, air and damage affecting land. The author further stressed that anyone causing environmental harm will be strictly liable. Although the author highlighted the polluter pays principle, it is yet to be robustly implemented in Nigeria. The author did not argue or identify the concept of PPP as a fulcrum of environmental crime identification and punishment nor did he import deterrence in award of damages as a possible method of curbing environmental offences (crime) in Nigeria . The current research will address this.

Atsegbua, Akpotaire and Dimowo[50] identified the instrumentality of law as one of the cardinal principles of protecting the environment. The authors examined the concept of environmental law, challenges inherent in the law, its relationship to development, pollution management, and health issues as well as enforcement of the laws to protect the environment. They expressed the view that with the promulgation of the Federal Environmental Protection Agency Act 1988 and the Harmful Wastes (Special Criminal Provision) Act (FEPA)1988, the concept of environmental law in Nigeria is not only programmed for mere control and compensation of harm on any environment, but now includes laws meant for monitoring, reduction and possible

[50] L. Atsegbua, Akpotaire and Dimowo, Environmental Law in Nigeria: Theory and Practice (Benin City Press, 2010) pp 1 - 555

prevention of environmental pollution. The opinion expressed by these learned authors tend to situate environmental law solely within the areas of monitoring, reduction and prevention of pollution identifying. The authors did not go further to associate these statutory instruments with environmental crime which has some of its basis on the pieces of legislation discussed in this dissertation as isolated for proper appreciation so as to profer good solutions.

Divan and Rosencranz[51] discussed environmental laws and policies extensively cutting across policy formulation of enactment of laws. The authors analysed economic growth effects on the environment, protection of the environment and rights attached to environmental degradation. Furthermore, they expressed the modalities for environmental protection as well as modes of enforcement by agencies, Courts and Non-governmental Organisations. The authors distilled what would amount to pollution of air, land, and water in India including wild life protection. Still discussions were had on regulation of hazardous substances and transnational environmental policies through guidelines on water protection and concluded on India's obligation to international environmental laws. However, the authors limited their discussion to India and failed to discuss environmental crime which the researcher intends to address with reference to Nigeria.

Ikpeze,[52] explored the legal, theoretical and jurisprudential issues involved in defining environmental rights and the justiceability of these rights under Nigerian

[51] S. Divan and A. Rosencranz, Environmental Law and Policy in India: Cases, Materials and Statutes (OUP India, 2002)

[52] N. Ikpeze, Selective Justiciability as Injustice: An Examination of Citizen's Rights to a Healthy Environment under the CFRN 1999 (as amended) Confluence Journal of Jurisprudence and International Law (2013) 6 (2) 76 -83.

law. It sought to answer the question of the scope of fundamental human right to a healthy environment in Nigeria, whether such rights actually exist. The author discussed Chapter II of the Constitution, examining how the Courts interpreted environmental provisions in the Constitution. Its research methodology included reference to doctrines, historical records and analysis of decided cases. The article argued that the same government which domesticated the African Charter, also retains a chapter in the Constitution which provides that the very same rights cannot be enforced by the Courts of law. This presents a glaring inconsistency and probably explains the difficulty to criminalise environmental harm. The article also questioned whether a State is free to maintain a law that is inconsistent with its treaty obligations.

Fagbongbe,[53] emphasized the consequences of escalation of environmental damage and advocated severe penalties in Nigeria such as fines, imprisonment, and seizure of property, but failed to illustrate implementation mechanisms which this researcher intends to furnish as compared to what obtains in other jurisdictions.

Oloworaran,[54] opined that the power to make laws referencing environment in Nigeria is vested on the National Assembly and State Houses of Assembly which is supported by section 20 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999. The author stressed the need for the State to protect and improve the environment so as to safeguard the water, air and land including forest as well as wild life in Nigeria. The Article explored the meaning of environment but the author did not make any reference to environmental crime legislations.

---

[53] L. Fagbongbe, 'Criminal Penalties for Environmental Protection in Nigeria; A Review of Recent Regulations Introduced by NESREA' (2012) NIALS Journal of Environmental Law *NJEL*; 22276-755X 2012

[54] Oloworarn, Petroleum, Natural Resources and Environmental Law Journal (2009); 3

Akinbola and Onifade[55], examined the remedies in environmental law cases in Nigeria as contained in the Constitution, Statues and Common Law and identified reliefs such as remediation orders and criminal sanctions. The authors captured the areas of Environmental litigation and enforcement of fundamental human rights, etc and mentioned criminal prosecutions. However, while discussing the aforementioned areas, the authors did not place any emphasis on criminal prosecution, rather, at page 345 of the article, the authors discussed penalties for environmental violations especially as it relates to fines. They did not go into the kernel of environmental crimes.

Ladan[56] focused on the development of the Nigerian formal environmental regimes. He stated that the aim of his article was to provide an overview of a comprehensive environmental legislation. In most recent times for effective protection of the environment, management of biodiversity and promotion of sustainable development in Nigeria and to provide an overview of the unprecedented development in Nigeria's environmental law by coming into force of eleven environmental regulations made by the Federal Government of Nigeria on 30 September 2009.

Adebayo, Jegede & Ogundele[57], the authors examined other acts which result to environmental degradation besides oil exploration. The article particularly focused on erosion, and opined that bad farming techniques are often responsible for land degradation, as it leaves the land bare due to ploughing and lowering the hills thereby resulting to sever soil erosion. Furthermore, they stated that non-involvement of

---

[55] B.R. Akinbola and T.T. Onifade, ' Legal and Administrative Remedies in Environmental Law in Nigeria: Reform Proposition.(Afe Babalola University Law Journal (ABUAD) (J) Jan. 2013)
[56]M.T. Ladan., In Journal Article titled Review of NESREA Act and Regulations (2007/2009)
[57]W O Adebayo and A. O. Jegede, Joseph Adunbi Ogundele, 'Environmental Laws in Nigeria: Negligence and Compliance on Road Transportation Land Use Planning Pattern in the South-South Geo-political Zone' (2015) Donnish Journal of Law and Conflict Resolution Vol. 1(3)

citizens in the formulation and execution of the laws lead to ignorance and affect implementation of laws. The work did not envisage criminalisation of environmental degradation of any magnitude of which this dissertation will focused.

Ikpeze,[58]. The article understanding the need for proper management and safe disposal of municipal wastes in Nigeria from a human rights perspective. It also examined the existing laws on waste management in Nigeria with emphasis on statutes such as the Constitution of the Federal Republic of Nigeria, 1999, the NESREA Act of 2007, the Environmental Impact Assessment Act of 2002 and so on. He further highlighted the relevant provisions of laws and judicial precedents which support a rights-based understanding of waste management and disposal in Nigeria. The author examined the herculean tasks and challenges of understanding waste disposal, the need for proper waste disposal in Nigeria, but failed to import criminalisation or novelty in environmental management in Nigeria.

Danjuma and Daura[59]. quoted a number of authors and the article identified the problems of update on environmental degradation. The problem which warranted the study is that many environmental degradation mitigation approaches have been organized and implemented in isolation in Nigeria, yielding negligible progress for example, in fights against degradation and desertification. Instead there appears to be hike in deterioration of the environment. The article highlighted the need to understand some environmental issues properly for a shift in the Nigeria's efforts to combat degradation. To ensure this, the article elaborated on the review of the

---

[58] N. Ikpeze, In Journal article 'Safe Disposal of Municipal Waste in Nigeria: Perspectives on a Rights Based Approach' Journal of sustainable development Law and Policy, (2014) Vol.3 (1)

[59] M.N. Danjuma and U.S. Daura, 'Towards Sustainable Mitigation of Environmental Degradation in Nigeria' [2014] Journal of Environment and Earth Science, ISSN 2224-3216 (Paper) ISSN 2225-0948 (Online) Vol.4, No.21 <www.iiste.org> accessed 2nd January 2017.

concept and approaches of environmental degradation assessment. The hope was that with discussions such as this, better mitigation measures can be achieved. This did not provide perspective on the most recent developments on environmental degradation policy and its enforcement.

Ikpeze, Osaro and Ikpeze[60] examined development predicated on energy supply and preservation of the environment to ensure sustainability by use of renewable energy such as solar, biomass and geothermal sources rather than use fossil fuel like crude oil, gas and coal.

The authors examined the concept of environment and the laws aimed at its protection as well as position of foreign Courts on matters of environmental pollution which is more of strict liability with remediating principles which are enforceable and enforced. However, the authors did not reference crimes committed against the environment.

Emodi[61] discussed environmental degradation in urban areas in Nigeria. Despite State and Federal Government efforts to cure the menace of problem so as to ensure environmental quality in Enugu, problems still linger. The author explored what happened in parts of the USA at various times in 1970 and 1999[62] showing environmental quality with reference to residents to include materials used in construction, number of dwelling units in an area, number of storms per year in the

---

[60] O.V.C. Ikpeze, E. Osaro and N.G. Ikpeze , In Journal of Environmental and Earth Science by International Institute for Science Technology and Education (IISTE) (2015); 18 Vol. 5 Nos18 2015 pp 146 – 154.

[61] Ibid at pp 116 – 124.

[62] E. Alkay, The Relationship between Environmental Quality level and Housing Sale Princes in the Istanbul Metropolitan Area. Istanbul Technical University Publication (2009)Vol.6 No.1 Pp60-76.

area as well as rural – urban migration which also appeared to have increased in the USA too[63]. He posited that research has shown that in other climes like Turkey[64], Ethiopia and Brazil indices such as better health services and education, improved solid waste and liquid waste disposal are necessities for quality environment.[65] These were the major factors handed by the author.

Agu,[66] imported the increasing quests for public participation in environmental governance globally. He examined the role of Non-Governmental Organisations (NGOs) in institution of public interest litigation on environmental degradation or pollution[67] . Still she posited that environmental issues are best handled with participation of all concerned citizens at all levels whether national, individually or globally[68] but failed to state any novel concepts or criminalisation of environmental degradation which this work will address.

Fagbonhum and Ojo,[69] enunciated access to justice for victims of oil pollution in Nigeria by way of resource governance using the laws to curb impediments to victims of pollution. Thus they drew a distinction between Environmental Justice (EJ) and

---

[63] A. Cendrero, Lopez and Adriana, A procedure for Assessing the Environmental Quality of Costal Areas for Planning and management in Journal of CoastalResearchVol.13.No.3 Pp 6-8.
[64] A. Cendrero and DW Fisher, Indicator sand Indices of Environmental Quality for Sustainable Assessment in Costal Areas, for planning and management (2003), Journal of costal Research, Costal Education Inc. (No.4) Pp 919- 933.
[65] Y Allern and P Martinasson ,How Important Environmental Quality for the Poor and What do policy makers know about it, A study subjective well being in Addis,, Ababa (2011) quoted in journal of Environmental and Earth Science by International Institute for Science, Technology and Education (IISTE) 2015 Vol.5 No.18 p.118.
[66] Published in Natural Resources and Environmental Law Journal Vol. 5 2013 pp 30-64.
[67] O.Fagbohun, Mournful Remedies, Endless Conflicts and Inconsistencies in Nigeria Quest for Environmental Governance ; Rethinking legal possibilities for sustainability (Lagos NAILS 2012) p. 78.
[68] S Bell and D McGillivay, Environmental Law (New York, 7th Edn, Oxford University Press Inc. 2008) p 311.
[69] Quoted in (NIALS) Journal of Environmental law (NJEL) 2012.Vol. 11 No. 2 pp 257 – 302.

Environmental Injustice (EI). Further distillations were made thus: EJ is said to exist when environmental risks, hazards, investments and benefits are equally distributed with a lack of discrimination whether direct or indirect, at any jurisdictional level; when access to environmental investments, benefits, and natural resources are equally distributed; and when access to information, participation in decision-making, and access to justice in environment related matters are enjoyed by all. Environmental Injustice on the other hand is stated to exist when members of disadvantaged ethnic minority or other groups suffer disproportionately from violations of fundamental human rights as a result of environmental factors; and/or denied access to environmental investment, benefits, and natural resources; and/or are denied access to information; and/or participation in decision-making and/or access to justice in environment-related matters. They further opined the potential use of law to reform legal rules, enforce laws and formulate policy even through case laws as a cornerstone of environmental advocacy. However, the authors did not explore the novel concepts in environmental crime and its enforcement which are the targets of this researcher.

Mmadu[70] discussed the challenge of technicalities in environmental litigations, jurisdictional issues of the trial Courts and the judicial attitude to environmental litigation and access to environmental justice in Nigeria but did not discuss environmental crime.

Akpan[71] focused on oil and gas related pollution, prevention and control. He stated that peculiar technological changing nature of the petroleum industry has become

[70] I. Mmadu, Afe Babalola University; Journal of Sustainable Development law and policy Vol. 2 Iss.1 pp 149 – 170.
[71] In Natural Resources and Environmental law Journal (2013); 5.

major violator of natural balance of the environment as well as the unbridled dependence and quest for increased revenue from oil and gas. Thus the intensity of pollution of the environment by exploitation ignoring the safety and health of the environment which includes human beings, are issues to tackle. The author further stated that the USA and China should be emulated on Public Interest Litigation and participation system through legislative action and incorporation of Conventions and Treaties on environmental pollution and prevention in Nigeria.

CHAPTER THREE

PRESENT LEGAL FRAMEWORK ON ENVIRONMENTAL CRIMIES IN NIGERIA

3.1 Brief Discussion on Some Critical Laws and Regulations on Nigeria's Environmental Protection

Corpus of legislations which somewhat relate to environmental crime in Nigeria include but not limited to the following: Harmful Waste (Special Criminal Provisions) (HWSCP) Act[72], Associated Gas Re-injection Act[73], Endangered Species Act[74], Sea Fisheries Act[75], Nigerian Mining Corporation Act[76], Factories Act,[77] Land Use Act[78], Hydrocarbon Oil Refineries Act[79], Oil Pipelines Act[80], NESREA Act[81], NOSDRA Act[82], EIA Act[83] and so on and so forth.

These Acts will be discussed in a nutshell hereunder. The research intends to seriously examine the contents of the provisions in some of the Acts to point out whether they adequately protect the Nigeria environment. Whether pollutions which may amount to crimes are so spelt out and strictly punished to curb or deter further

---

[72] Cap H1, LFN 2004.
[73] Cap A10, LFN 2004.
[74] Cap E9, LFN 2004.
[75] Cap S4, LFN 2004.
[76] Cap N129, LFN 2004.
[77] Cap F10, LFN 2004.
[78] Cap L5, LFN 2004.
[79] Cap H, LFN 2004.
[80] Cap O4, LFN 2004.
[81] No. 25 of 2007.
[82] No 15 of 2006.
[83] Cap E12, LFN 2004.

occurrences thereby safeguarding the environment which include the citizens of Nigeria.

3.2 National Environment Standards and Regulation Enforcement Agency (NESREA) Act

It is about the most critical law on environmental protection in Nigeria. It is greatly empowered to ensure safety in Nigeria's environment and provide sanctions. The researcher for clarity intends to espouse some provisions of NESREA Act. It must be noted that NESREA[84] replaced the Federal Environmental Protection Agency (FEPA) Act. It is the embodiment of laws and regulations focused on the protection and sustainable development of the environment and its natural resources. The following sections of NESREA are worth noting:-

Section 7 provides authority to ensure compliance with environmental laws, local and international, on environmental sanitation and pollution prevention and control through monitoring regulatory measures.

Section 8 (1)(K) empowers the Agency to make and review regulations on air and water quality, effluent limitations, control of harmful substances and other forms of environmental pollution and sanitation.

Section 27 prohibits, without lawful authority, the discharge of hazardous substances into the environment. This offence is punishable under this section, with a fine not exceeding, N1,000,000 (One Million Naira) and an imprisonment term of 5 years. In

[84] Cap F10, LFN 2004 (now an obsolete Law).

the case of a company, there is an additional fine of N50,000 for every day the offence persists.

By the provision of sections 7, 8 and 27 of this Act,[85] it is clear that there is desire by the law to ensure compliance to environmental laws against pollution through the Agency by monitoring as a measure of control still the Agency is empowered to ensure quality of water by limiting harmful effluents[86]. However by section 27 the punishment for discharging hazardous substances is a fine not exceeding one million (₦1,000,000) and imprisonment for 5 years and for a company ₦50,000 for each day the offence continues. Now the lack of will for adequate punishment is demonstrated by the ₦1,000, 000 fine where the company makes billions from committing the offence, what is ₦1,000,000?

Section 13 (1) provides for funding from Federal and Multilateral Agencies: The Agency shall establish a Fund from which shall be defrayed all expenditure incurred by the Agency for the purposes of this Act.

Section 14 Provides for how the funds will be applied; The Agency shall, from time and time; apply the funds at its disposal to: (b) the cost of compliance monitoring and enforcement activities.

Section 16: The agency shall submit to the President through the Minister, not later than 30th September each year, its programme of work and estimates of its income and expenditure for the following year.

---

[85] 2007 This Laws is the most encompassing. Yet the inadequacies are glaring.
[86] Section 7 NESREA Act 2018.

Section 20 (1) The Agency may make regulations setting specifications and standards to protect and enhance the quality of Nigeria's air resources, so as to promote the public health or welfare and the natural development and productive capacity of the nations' human, animal, marine or plant life including, in particular;

Minimum essential air quality standards for human, animal, marine or plant health;

(c) the most appropriate means to prevent and combat various atmospheric pollution

(e) Standards applicable to emissions from any new mobile or stationary source which in the Agency's judgment causes or contributes to air pollution which may reasonable be anticipated or endanger public health or welfare and;

(f) The use of appropriate means to reduce emission to permissible levels,

(3) A person who violates the regulations made pursuant to subsection (1) of this section commits an offence and shall on conviction, be liable to a fine not exceeding ₦200,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N20,000 for every day the offence subsists.

(4) Where an offence under subsection (1) of this section is committed by a body corporate, it shall upon conviction be liable to a fine not exceeding ₦2,000,000 and an additional fine of N50,000 for every day the offence subsists.

21 (1) The Agency shall in collaboration with other relevant agencies undertake to study data and recognise development in force in other countries regarding the

cumulative effects of all substances, practices, processes and activities which may affect the stratosphere.

(4) where an offence under subsection (2) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N2,000,000 and an additional fine of N50,000 for everyday the offence subsists.

26 (1) The Agency may make regulations, guideline and standards for the protection and enhancement of the quality of land resources, natural watershed, coastal zone. Dams and reservoirs including prevention of flood and erosion, to serve the purpose of this Act.

(3) A person who violates the provisions of the regulations made pursuant to subsection (1) of this section, commits an offence and shall on conviction, be liable to a fine not exceeding N200,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and an additional fine of N10,000 for every day the offence subsists.

(4) Where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N1,000,000 and an additional fine of N50,000 for every day the offence subsists.

27 (1) The discharge in such harmful quantities of any hazardous substance into the air or upon the land and the waters of Nigeria or at the adjoining shorelines is prohibited, except where such discharge is permitted or authorized under any law in force in Nigeria.

(2) A person who violates the provisions of subsection (1) of this section, commits an offence and is liable on conviction, to a fine, not exceeding N1,000,000 or to imprisonment for a term not exceeding 5 years.

(3) Where an offence under subsection (1) of this section is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N1,000,000 and an additional fine of N50,000 for every day offence subsists.

(4) Where an offence under subsection (1) of this section is committed by a body corporate, every person who at the time the offence was committed was in charge of the body corporate shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly provided that nothing contained in this subsection shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

29 The Agency shall co-operate with the Government agencies for the removal of any pollutant excluding oil and gas related ones discharged into the Nigeria environment and shall enforce the application of best clean up technology currently available and implementation f best management practices as appropriate.

30 (1) An officer of the Agency may, in the course of his duty, at any reasonable time and on production of his certification of designation if so required

(a) enter and search with a warrant issued by a Court, any premises including land, vehicle, tent, vessel, floating craft except Maritime Tankers, Barges or Floating production, storages Offload (EPSO) and oil and gas facilities or any inland water

and other structures, at all times, for the purpose of conducting, inspection, searching and taking samples for analysis which he reasonably believes, carries out activities or stores goods which contravene environmental standards or legislation.

Administered by the Ministry of Environment, the National Environment Standards and Regulation Enforcement Agency (NESREA) Act of 2007 replaced the Federal Environmental Protection Agency (FEPA) Act of 1992 (Cap F10 2004). It is the embodiment of laws and regulations focused on the protection and sustainable development of the environment and its natural resources. The following sections are worth noting:-

Section 1(1) and (2) empowers NESREA to co-ordinate and liaise with relevant stakeholders within and outside Nigeria in relation to matters of environmental standards, regulations, rules, laws, policies and guidelines.

Section 7 provides authority to ensure compliance with environmental laws, local and international, on environmental sanitation and pollution prevention and control through monitory and regulatory measures.

Section 8 (1)(K) empowers the Agency to make and review regulations on air and water quality, effluent limitations, control of harmful substances and other forms of environmental pollution and sanitation.

Section 27 prohibits, without lawful authority, the discharge of hazardous substances into the environment. This offence is punishable under this section, with a fine not exceeding, N1,000,000 (One Million Naira) and an imprisonment term of 5 years. In the case of a company, there is an additional fine of N50,000, for every day the

offence persists. The question here is what is N1,000,000 to an oil company whereas in other climes, the corporations much more The United States v Exxon Corporation serves as a vivid instruction. Exxon paid $1.125bn which included $250m for criminal fines and restitution. Whereas in Nigeria the Court would have awarded ₦4.6m as seen in SPDC v Farah[87] where a claim for ₦2m was added up in award of ₦4.3m as ₦2.3m for compensation for use of land, ₦2m for rehabilitation and ₦250,000 for general damages. Note that this judgment was an improved situation from past decisions. it is worthy of note that Nigerian Courts appear too conservative on the award of damages thereby trivialising pollution as demonstrated in Mon & Anor. v SPDC[88] where the Court awarded ₦250 for pollution of fish pond. One may humbly ask is this not a crime? It not possible that the owner of the fish pond could have died? Will N250,000 encourage such acts in future? Why not make it an offence? Why not remove fine as an alternative to imprisonment? There are so many questions begging for answers. Probably the application of the stains theory on eagerness for economic gains quests makes the government of Nigeria to trinalise environmental crimes especially by corporate bodies to the deteriment of the citizens who wallow in object poverty as their farm lands, ponds, water bodies are destroyed by pollutions imparting harm to the environment.

3.2.1 Some Regulations Under NESREA

National Effluent Limitation Regulations

---

[87] (1995)5NWLR (pt 398) 561.
[88] (1970) R.S.L.R 711.

Section 1 (1) requires industry facilities to have anti-pollution equipment for the treatment of effluent.

Section 3 (2) requires a submission to the agency of a composition of the industry's treated effluents.

National Environment Protection (Pollution Abatement in Industries and Facilities producing Waste) Regulations (1991).

Section 1 Prohibits the release of hazardous substances into the air, land or water of Nigeria beyond approved limits set by the Agency.

Section 4 and 5 requires industries to report a discharge if it occurs and to submit a comprehensive list of chemicals used for production to the Agency.

It is to regulate, monitor and enforce most of the laws on environmental degradation leading to pollution with penalties and prosecutor powers. However, strangely by section 29 (2) of the Act the Control of Environmental Harm emanating from Oil and Gas industries was excluded from the Agency. Though a new Agency of the Federal Government- The National Oil Spill Detection Regulation Agency (NOSDRA) Act No 15 2006 handles such pollution, it is posited by the writer that :

Section 1 (1) requires industry facilities to have anti-pollution equipment for the treatment of effluent.

Section 3 (2) requires a submission to the agency of a composition of the industry's treated effluents.

3.2.2 National Environment Protection (Pollution Abatement in Industries and Facilities producing Waste) Regulations (1991).

Section 1 Prohibits the release of hazardous substances into the air, land or water of Nigeria beyond approved limits set by the Agency.

Section 4 and 5 requires industries to report a discharge if it occurs and to submit a comprehensive list of chemicals used for production to the Agency.

3.2.3 Federal Solid and Hazardous Waste Management Regulations (1991).

Section 1 makes it an obligation for industries to identify solid hazardous wastes which are dangerous to public health and the environment and to research into the possibility of their recycling.

Section 20 makes notification of any discharge to the Agency mandatory.

Section 108 stipulates penalties for contravening any regulation.

3.2.4 The National Oil Spill Detection And Response Agency Act[89]

The Agency was established for quick detection of oil spills in Nigeria and to address such spills. Its responsibility is preparedness, detection and response to all oil spillages in Nigeria. The Act is vested with a corporate identity with a perpetual succession with the powers to sue and be sued in its name. It is the writer's view that this provision that allows the Agency to sue and be sued in its own name is one potent tool in the hands of the Agency. If the powers given therein are well deployed the Agency can compel multinational companies (who are most times the culprits)

[89] Otherwise referred to as NOSDRA Act 2006.

comply with stipulated standards contained in the NOSDRA Act 2006 and its Regulations. Once there is a violation of provision of the Act or any of its Regulations, the Agency can impose sanction on an offender and thereafter commence legal action in Court without recourse to the office of the Attorney General of the Federation.

The importance of this Act can never be over-emphasized for the reason that oil spillage is a very serious event which the agency is foist with the responsibility of addressing Oil spillage whenever it occurs. The effect of Oil spillage is so deleterious as it destroys wherever and whatever it touches like marine life, the vegetation on the Land as well as the soil fertility. Therefore, as a matter of necessity, it is paramount that members of the agency must understand the enormous responsibility thrust on them and for all times. In other to avoid being taken unaware and to avoid delays which can be very dangerous to lives and property of the State and individuals including the protection of the environment.

However, at the occurrence of disastrous spillage[90] the agency must ensure that sufficient mobilization is done to clean up the environment [91] by engaging available facilities and resources (like the International connections and the Clean Nigeria Association (CNA) as well as provide sufficient funding, technical support, training, research and development[92]. The agency is expected to establish agreements with neighouring countries for co-operation in the event of spillage so as to ensure rapid response to spillage. The researcher posits that there should be critical training of

[90]. S. 5(a) NOSDRA Act 2006

[91]ibid

[92].S. 5(e), (h), (i) NODSRA Act, The International Organisation is expected to be engaged in research and exchange of results of research and development programmes including surveillance, containment recovery, disposal and clean up best practices .

experts and a commission set up for the experts entrusted with only immediate assessment of any oil spill and commensurate punishment by award of proper damages in civil perlance and correct penalties for the crime aspects using international application only then can Nigeria get it right.

3.3 Espousing Some Other Principal Acts Relevant to Nigeria's Environment

This work will not be complete if some of the principal Acts or Laws are not examined to bring to bear their various contents. The intendment of the Law by way of protecting the interest of the nation will be explored. Where there is inadequacy in the provisions of any law; input will be made with regard to what obtains in other places where activities concerning Oil and Gas are carried out.

National Effluent Limitation Regulations.

It is to regulate, monitor and enforce most of the laws on environmental degradation leading to pollution with penalties and prosecutor powers. However, strangely by section 29 (2) of the Act the Control of Environmental Harm emanating from Oil and Gas industries was excluded from the Agency. Though a new Agency of the Federal Government- The National Oil Spill Detection Regulation Agency (NOSDRA) Act No 15 of 2006 handles such pollution, it is posited by the writer that :

Section 1 (1) requires industry facilities to have anti-pollution equipment for the treatment of effluent.

Section 3 (2) requires a submission to the agency of a composition of the industry's treated effluents.

3.3.1 Harmful Waste (Special Criminal Provisions) Act[93]

The interesting thing about this Act is that most developing countries which Nigeria happens to be one, experience glaring dumping characteristics from developed countries. Interestingly the Act[94] provides as follows: Whoever

carries, deposits, dumps or is in possession for the purpose of carrying, depositing or dumping any harmful waste on any land or in the territorial waters or contiguous zone or the Executive Economic zone (EEZ) of Nigeria or its inland water ways; or

transports or causes to be transported or is in possession for the purpose of transporting any harmful wastes; or

imports or causes to be imported or negotiates for the purpose of importing any harmful wastes: or

Sells, offers for sale, buys or otherwise deals in any harmful wastes shall be guilty of a crime under this Act. The imputation of dumping here is a reminder of the 1998 Koko toxic waste saga whereby toxic waste was dumped in tonnes at a town in Delta State of Nigeria by an Italian called Mr. Gianfranco Rafelli who was aided by some get-rich

---

[93] HWSCP Act, in force since 25th November, 1988.

[94] HWSCP Act s1(2)(a),(b),(c) and (d).

quick Nigerians who approached a Koko Landlord, Mr. Sunday Nana, and offered him a rent of ₦500 (five hundred naira) a month to allow them the use of part of his compound to store some drums of chemicals imported into Nigeria through Koko port.[95] Immediately thereafter, some Nigerian students in Italy sent a distress call to Nigerian stating that the chemicals from Italy were toxic.

A Nigerian nuclear Scientist[96] who became special assistant to the Minister of Science and Technology confirmed that the Koko waste was toxic.

A scholar Steve Azaiki wrote that the act between Nigeria and Italian Governments. To the extent that the Italian government brought in a vessel MV Marol S. Haren that slipped the drums out of Nigeria back to Italy. Thereafter the site were the drums were packed was excavated to a depth of 60 centimetres and the borrow pit was refilled with approved soil from an approved site. The weight of the perceived harm will be estimated with the subsequent event that followed as the Federal Government of Nigeria set up a panel to measure the level of radio activity of the substance in Koko. The Harmful Waste Act prohibits, without lawful authority, the carrying, dumping or depositing of harmful waste in the air, land or waters of Nigeria. The following sections are notable:

Section 6 provides for a punishment of life imprisonment for offenders as well as the forfeiture of land or anything used to commit the offence.

---

[95]. The offer was attractive and Mr. S. Nana accepted. Thereafter s 8000 drums of toxic water containing 35000 tones of deadly chemicals .

[96]. Professor B.N.C. Agu who worked as a Director of Nuclear Safeguards at the International Atomic Emery Agency in Vienna.

Section 7 makes provision for the punishment accordingly, of any conniving, consenting or negligent officer where the offence is committed by a company.

Section 12 defines the civil liability of any offender. He would be liable to persons who have suffered injury as a result of his offending act.

Any application for survey licence must state the approximate route or alternative routes proposed. The route is for the transportation of mineral oil, natural gas or any product of such oil or such gas or product to be transported for any purpose connected with petroleum operations and trade[97]. The application is upon the payment of appropriate fees[98] when a licence is issued to permit an applicant to survey, it becomes effective for the person to:

1. survey and take levels of the land
2. dig and bore into the soil and subsoil
3. cut and remove such trees and other vegetation as may impede the purpose specified in this sub-section and
4. do all other acts necessary to ascertain the suitability of the land for the establishment of an oil pipeline or ancillary installations.

However the survey route may be altered by government[99]. However, it is interesting that specification of the route of the oil pipeline passage gives opportunity for the government via the Minister to give at least six weeks' notice for anybody whose interest on land likely to be affected to raise objections[100] where such objection is proven on inquiry by government through her agents (Minister or appointed

[97] HWSCP Act 1988 section 4(1)(2).
[98] HWSCP Act 1988 section 31(1)(2)(3)(4)(5).
[99] HWSCP Act 1988 section 5(1)(a)(b)(c)(d) and (2).
[100] HWSCP Act 1988 section 8 and 9.

representative) the compensation is to be paid by the holder of the licence in accordance section 5 and the subsections as follows:

5(a) to any person whose land or interest in land (whether or not it is land in respect of which the licence has been granted) is injuriously affected 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 under the licence, for any such damage not otherwise made good; and

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; where there is disagreement as to the quantum of compensation recourse will be hard to the Court and it shall fix the amount as stipulated in part iv of this Act[101].

It is noteworthy, that any other person can apply to the Minister for permission to use the pipeline constructed and maintained by the holder of a licence to convey oil products and the Minister will grant the application upon consultation with the owner of the pipeline. However, if the owner of the pipeline fails to comply, he will be guilty of an offence and will be liable or summary conviction to a fine from

[101]. By sections 19, 20, 21, 22, on jurisdiction of a Magistrate Court seized of such amount for the compensation on only the jurisdiction to title to land or any interest to any land. Otherwise by a High Court of a State whether as an original trial or appeal thereto. The compensation is basically for crops, or neglect on the part of the holder of licence to protect, maintain or repair any structure or thing.

N1000.00 immediate which will be up to N50,000 per each day if failure to comply continues.

One may ask what is an oil pipeline, the answer may be discovered in Nigerian AGIP Oil Company Ltd v Kemmer[102] where the Court of Appeal held that:

An oil pipeline means a pipeline for the conveyance of oil minerals, natural gas and any other derivatives or components also any substance (including steam and water) used or intended to be used in the production or refining or conveying of mineral oils, natural gas and any of their derivatives or components.

The Oil Pipelines Act and its Regulations guide oil activities. The following sections are pertinent;

Section 11 (5) creates a civil liability on the person who owns or is in charge of an oil pipeline. He would be liable to pay compensation to anyone who suffers physical or economic injury as a result of a break or leak in his pipelines.

Section 17 (4) establishes that grant of licenses are subject to regulations concerning public safety and prevention of land and water pollution

This Act stipulates the procedure for obtaining licenses to build, establish and maintain pipelines for use by oilfields and oil mining companies in Nigeria.[103] It defines pipelines to include 'a pipeline for the conveyance of mineral oils, natural gas and any of the their derivatives or components, and also any substance (including steam and water) used or intended to be used in the production or refining or

---

[102] . [2001] 8WLR (pt. 716) p. 506.
[103] Arts 5-6, ibid.

conveying of mineral oils, natural gas, and any of their derivatives or components.'[104] There are two types of permits that can be obtained under the Act: permit to survey routes for oil pipelines that license to construct, maintain and operate oil pipelines

Under the Act, a license holder must take reasonable steps to avoid unnecessary damage to land, building, crops or profitable trees. Where such damage occurs, the holder must pay compensation (Section 6). Furthermore, under section 11(5) (c) an oil pipeline license holder is required to compensate persons who suffer damages as a result of leaks or breaks in pipeline. The Act prohibits a license holder from making alteration to the flow of water in any navigable waterway, or waterways require for domestic or irrigational use such as to diminish or to restrict the available amount of water, or undertake construction activities that will cause flooding or erosion, without express permission of the Minister.[105]

In addition, section 17(4) makes the grant of licenses subject to regulations to be made by the Minister under section 33 (c) concerning public safety and prevention of land water pollution. The oil pipelines Regulations made pursuant to the Oil Pipelines Act, implement the provisions of this Act[106] section 9 (1) of these regulations, requires that environmental emergency plans be put in place by pipelines

---

[104] OPA 1956, LFN 2004,.

[105] Preamble ibid.

[106] S 11 (2), ibid. in Nigerian AGIP Oil Company v Kemmer (2001) 8NWLR Pt 716 p.506, the Court defined an oil pipelines as: "pipelines for the conveyance of oil minerals, natural gas and any of their derivative or components, and also any substance (including steam and water) used or intended to be used in the production or refining or conveying of mineral oils, natural gas, and of any of their derivatives or components." See also Shell Petroleum Development Company of Nigeria Ltd. v. Abel Isaiah and Ors. (2001) 1 N.W.L.R. Pt. 723 p169 where the Court held that installation of pipelines, producing, treating and transmitting of crude oil to the storage tanks is part of petroleum mining operations.

operators, while section 26 makes any contravention of the regulations punishable with a fine and/or imprisonment.

3.3.2 The Petroleum Act of 1969[107]

This is the key legislation that regulates oil and gas production in Nigeria. The Act provides for the exploration of petroleum from territorial waters and the continental shelf of Nigeria and also vests the ownership of, and all onshore and offshore revenue from petroleum resources in the Federal Government of Nigeria. The Act empowers the Minister of Petroleum Resources to grant three types of interest – exploration, prospecting and production rights.

The Petroleum Act and regulations made pursuant to it are the primary tools for environmental regulation in the oil and gas sector. Its environmental protection provisions are under the general powers given to the minister to make regulations.[108] The Act vests the Minister of Petroleum Resources powers to make regulations for safe working of Petroleum Resources powers to make regulations for safe working of petroleum operations; prevention of pollution of water courses and the conservation of petroleum resources, among others.[109] In practice however the Department of Petroleum Resources ("DPR") exercises the power granted by section 9(1) of the Petroleum Act pursuant to its mandate to enforce safety and

---

[107] Ibid, s1.
[108] Ibid, s2.
[109] The Petroleum Act 1969 (as amended) LFN 2004, c P10. The Powers of the Federal Government of Nigeria to lawfully exercise legislative, exclusive and judicial powers over oil and gas resources was upheld in Attorney General of the Federal (AGF) vs. Attorney Generally of Abia State (No. 2) (2002) 6 N.WLR 3. See also Famfa Oil Ltd. Vs. A.G.F v NNPC (unreported suit No. C. CA/A/173/06).

environmental regulations.[110] In carrying out this regulatory function effectively, the DPR issues environmental guidelines, which cover the control of pollution from various aspects of petroleum exploration, production and processing operation.[111]

The Petroleum Act as amended[112]

It contains sixteen (16) Sections and four (4) schedules. It is one of the principal Acts dictating petroleum operations in Nigeria.

Some provisions of the petroleum Act. The Act specifically provided in its preamble as follows:

An Act to provide for the exploration and the continental shelf of Nigeria and to vest the ownership of and all on-shore and off-shore revenue from petroleum resources derivable therefrom other matters incidentals thereto.

Section 1 vests Petroleum in the State while sub-section 1 provides that: the entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the state.

In subsection 2, analysis as to the land to be covered was specified as all land (including land covered by water) which is in Nigeria or

(a) is under the territorial waters in the as defined Territorial water Act of Nigeria or

(b) form part of the continental shelf or forms part of the Exclusive Economic Zone of Nigeria. The content of section 2 is very important as it relates to oil exploration

---

[110] Ibid, s 9.
[111] Ibid, s 9(1) (b) (iii).
[112] 1972 , 1973 and 1998

licences, Oil prospecting lincences and Oil mining leases in the following provisions:

2 (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.

(c) a lease, to be known as an oil mining lease, to search for win, work, carry away and dispose of petroleum[113].

Even refineries can only be constructed or operated in Nigeria with a licence granted by the Minister of Petroleum on the payment of prescribed fees, who is responsible to the President of the Federation[114]. In section 4 contain provisions for control of petroleum products thus: 4 (1) subject to this section, no person shall import, store sell or distribute any petroleum products in Nigeria without a license granted by the Minister[115]

Section 4 (6) provides on the punishment for operating contrary to the law thus: Any person who does, without the appropriate licence, any act for which offences was committed shall be forfeited

---

[113]It must be note d that the licence or lease can only be given as provided in subsection 3 of section 2 of the petroleum Act to company incorporated in Nigeria under CA MA.

[114] PA 1969 s3

[115]. In sub-section (2) (a), it was state that obtaining licence shall not apply storage, sale or distribution of not more than 500 litres of kerosene, and such other categories of petroleum products as may be exempted from the application of subsection (1) as ay be published in the Federal gazette and (2) (b) provides that storage of petroleum products under taken otherwise than in connection with the importation, sale or distribution of petroleum products.

Section 6 relates to the power of the Minister to control price. This is important as the populace often protest any increase in price of petroleum products particularly on fuel or kerosene prices. The increase in such prices affect virtually all sectors of the economy.

Section 7 relates to rights of pre-emption which is hinged on emergency situations whereby it is expected that the Minister must inform the President on the low level of availability of petroleum and petroleum products[116] and if the President is satisfied shall declare a state of national Emergency

In section 9 (b) are regulations relate generally to

(i) safe working

(ii) The conservation of petroleum resources

(iii) The prevention of pollution of water courses and the atmosphere

(iv) The keeping and inspection of records, books, statistics accounts and plans.

(v) The measurement of production

(vi) The measurement of crude oil delivered to refineries interestingly section 9 (c) provides regulations and construction, maintenance and operation of installations used in pursuance of this Act.

Instructively section 9 (1) (e) provides regulation in relation to importation, handling, storage and distribution of petroleum, petroleum products and other

[116] PA 1969 s7(5)

inflammable Oils and liquids and in particular (without prejudice to the generality of the foregoing:

(i) Prohibiting the importation or exportation of petroleum or petroleum products except at specified port or places.

(ii) Prescribing the notice to be given (and by whom the same shall be given) on arrival at a port of a ship carrying petroleum or petroleum products as cargo:

(iii) defining dangerous petroleum and dangerous petroleum products, prescribing anchorages petroleum products as cargo and requiring those ships to proceed to and remain at those anchorages:

(iv) regulating the loading, unloading, transport within a port, landing, trans-shipment and shipment of petroleum and petroleum products.

(v) Providing for the licensing of lighters and other craft to carry petroleum and petroleum products within a port:

(vi) Prescribing conditions and restrictions to be imposed upon vessels arriving at a port after having carried petroleum, petroleum products, or dangerous petroleum products.

(vii) Providing for the examination and testing of petroleum tests to be applied to ascertain its and petroleum and flash points and the method of applying those tests; and petroleum products and prescribing.

(viii) Subject to subsection (2) of this section, regulating transport of petroleum and petroleum products prescribing the quantity of petroleum and petroleum products which may be carried in any vessel, cart, truck, railway wagon or other

vehicle, the manner in which they shall be stored when being so carried the receptacles in which they shall be contained when being so carried and the questions to be contained in those receptacles, and providing for the search and inspection of any such vessel, cart, truck, railway wagon or other vehicles.

The other very important aspect of the petroleum Act is the provision to have any question or dispute settled by arbitration[117]

3.3.3 Mineral Oil (Safety) Regulations to the Petroleum Act 1969[118]

The aim of this Regulation is to ensure the safety handling of mineral oil. It prescribes precautions to be taken in the production, loading, transfer and storage of petroleum products to prevent environmental pollution. Regulation 7 provides that where no specific provision is made by this regulation in respect of drilling and production operations, all drilling, production, and other operations necessary for the production and subsequent handling of crude oil and natural gas shall conform with good oil practice by the Institute of Petroleum Safety Codes, the American Institute Code or the American Society of Mechanical Engineers Codes.

The approach adopted in this Regulation of trying environmental best practices in Nigeria to international best practices without adaption to local environment

---

[117].In section 11, to wit that the question or dispute shall be settled in accordance with the law relating to arbitration of the appropriate States.

[118] See the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) (Issued by the Department of Petroleum Resources, (DPR) (Lagos, 1991, Revised in 2002) at ii.

concerns is a key weakness that has often created ambiguities and difficulties in proper implementation.

3.3.4 Environmental Impact Assessment Act of 1992

The purpose of the EIA Act is to among other things establish before a decision taken by any person, authority corporate body or unincorporated body including the Government of the Federation, State or Local Government intending to undertake or authorise the undertaking of any activity that may likely or to a significant extent affect the environment. Such activities include the disposal of solid waste in the environment.

This Act is paramount to the extent that most activities in the Oil and Gas industry affect the environment one way or the other. Where there are visible development or there is obvious degradation of the land to the extent that the land may become barren and grow no food or pollution of the waters that will affect the marine habitant or pollution of the atmosphere; for example gas flaring that will pollute the atmosphere and in extreme condition lead to acid rain when there is much sulphur in the atmosphere when mixed with carbon dioxide descends as rain containing acid which is very dangerous to health.

The objectives of any environmental impact assessment are:

to establish before a decision is taken by any person, authority, corporate body or unincorporated body including the Government of the Federation, State or Local Government intending to understand or authorize the undertaking of any activity, those matters that may be likely or to a significant extent affect the environment or

have an environmental effect on those activities and which shall be taken into account.

Promote the implementation of appropriate policy in all Federal lands, (however acquired) State and Local Government Areas, consistent with all laws and decision making processes through which the goal and objective in paragraph (a) of this section may be realized.

Encourage the development of procedures for information exchange, notification and consultation between organization 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[119].

Again no sector of the economy whether private or public shall embark on any project notwithstanding its authorization without prior consideration, at an early stage, of their environmental effects. For clarity, the minimum content of environmental impact assessment are to be carried out as follows:

a. a description of the propose activities,
b. a description of the potential environment, including specific information necessary to identify and assess the environmental effect of the proposed activities.
c. a description of the practical activities as appropriate,
d. an assessment of the likely or potential environmental impact of the proposed activity and the alternatives, including the direct or indirect cumulative, short-term and long-term effects.

[119]EIA 1992 (a) (b) (c) and 2.

e. An identification and description of measures available to mitigate adverse environmental impacts of proposed activity and assessment of those measures;
f. an indication of gaps in knowledge and uncertainty which may be encountered in computing the required information.
g. an 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;

A brief and non-technical summary of the information provided under paragraphs (a) to (g) of this section. Before environmental impact assessment is carried out, opportunity (stipulated duration and access) must be created for comments by person or persons (groups) that may likely be affected. Again, it is expected that the public and experts will comment.

Any decision of environmental impact assessment must be in writing as provided in section 9 of the Act and ought to also include the following:

(a) State the reason for the decision.

(b) the provisions, if any to prevent, reduce or instigate damage to the environment.

(2) the report of the Agency shall be made available to any interested person or group.

(3) … the report may be published to the public.

An Environmental Impact Assessment (EIA) is an assessment of the potential impacts whether positive or negative, of a proposed project on the natural environment: The E.I.A Act, as it is informally called, deals with the considerations of environmental impact in respect of public and private projects.

Sections relevant to environmental emergency prevention under the EIA include:-

Section 2 (1) requires an assessment of public or private projects likely to have a significant (negative) impact on the environment.

Section 2 (4) requires an application in writing to the Agency before embarking on projects for their environmental assessment to determine approval.

Section 13 establishes cases where an EIA is required and

Section 60 creates a legal liability for contravention of any provision.

3.3.5 Associated Gas Reinjection Act 1979[120]

The purpose of this Act is to phase out gas flaring in Nigeria. The Act imposes a mandatory requirement on all oil producing companies to submit detail preliminary programmes and plans to implement programmes relating to the re-injection or viable utilization of all produced associated gas[121]. It sets mandatory limits for oil companies to submit schemes for the viable utilization of all associated gas produced not later than 1st April 1980[122]. It also set 31 December 1984 as end date for oil

[120]Cap A10, LFN 2004.
[121] AGRIA 1979 .
[122] OPR 1956, LFN 2004 .

companies to stop gas flaring, subject to permission from the Minister. Furthermore, it stipulates penalties for failure to comply.[123] The Act focuses solely on utilization; and does not contain any express environmental protection provisions. However its mandate to increase utilization of associated gas in Nigeria is aimed at reducing or stopping gas flaring, which result to environmental pollution.

3.3.6 Sea Fisheries Act[124]

The Sea Fisheries Act makes it illegal to take or harm fishes within Nigerian waters by use of explosives, poisonous or noxious substances. Relevant sections include the following:-

Section 1 prohibits any unlicensed operation of motor fishing boats within Nigerian waters.

Section 10 makes destruction of fishes punishable with a fine of N50,000 or an imprisonment term of 2 years.

Section 14 (2) provides authority to make for the protection and conservation of sea fishes.

3.3.7 Inland Fisheries Act[125]

---

[123] AGRIA 1979, LFN 2004 A25.
[124] SFA s4, LFN 2004

Focused on the protection of the water habitat and its species, the following sections are instructive:

Section 1 prohibits unlicensed operations of motor fishing boats within the inland waters of Nigeria.

Section 6 prohibits the taking or destruction of fish by harmful means. This offence is punishable with a fine of N3, 000 or an imprisonment term of 2 years or both.

3.3.8 Hydrocarbon Oil Refineries Act[126]

The Hydrocarbon Oil Refineries Act is concerned with the licensing and control of refining activities. Relevant sections include the following:-

Section 1 prohibits any unlicensed refining of hydrocarbon oils in places other than a refinery.

Section 9 requires refineries to maintain pollution prevention facilities.

3.3.9 Associated Gas Re-injection (Continued Flaring of Gas Regulations) 1990.

These regulations reviewed the initial flare penalty of 2 kobo imposed by the 1985 regulations to 50 kobo per 100scf. These regulations were part of efforts to stop gas flaring and encourage utilization in Nigeria. [127]

[125] IFA s110, LFN 2004
[126] LFN 2004, HOR H5.
[127] See generally, the Associated Gas Re-Injection (Continue Flaring of Gas Regulations) 1984, LFN 2004, c A25, art 1.

3.3.10 Criminal Code Act of 1916[128]

This Act is Nigeria's principal law on criminal matters. It establishes punitive measures for diverse outlawed activities and crimes in Nigeria. The Criminal Code contains provisions for the prevention of public health hazards and for environmental protection. Hence:

Sections 245-248 deal with offences ranging from water fouling, to the use of noxious substances.

The Criminal Code also contains comprehensive provisions that stipulate fines or imprisonments for public health hazards, hazardous activities or conducts that pollute the environment. Notable amongst these are provisions dealing with fouling or corrupting waterways, springs or streams to render them unfit for their ordinary purpose;[129] burial of corpses in residential dwellings; and vitiation of 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;[130] sending any explosive substance, or any acid, or other thing of a dangerous or destructive nature, under a false description of the substance in a vessel;[131] failure to perform duty, or breaking laws regarding the shipping, unshipping, landing, putting off shore, conveyance, delivery of storage of any explosive substance, or of any acid or other thing of a dangerous or destructive nature.[132] Evidently, these provisions establish categories of environmental Crimes (i.e illegal acts which directly harm the

[128] Ibid, s 2.
[129] Ibid, section 9.
[130] The CC Act, Laws of the Federation of Nigeria 2004, Cap 38.
[131] Ibid, section 245.
[132] Ibid, section 247 (a).

environment), which if robustly prosecuted, could result in significant fines or jail terms for illicit dumping of wastes, oil spillage, gas flaring, sabotage and discharge of effluents in waters.

3.3.11 Hydrocarbon Oil Refineries Act[133]

The Hydrocarbon Oil Refineries Act is concerned with the licensing and control of refining activities. Relevant sections include the following:-

Section 1 prohibits any unlicensed refining of hydrocarbon oils in places other than a refinery.

Section 9 requires refineries to maintain pollution prevention facilities

3.3.12 Environmental Sanitation Laws:

This is a law of Lagos State focused on environmental sanitation and protection. It punishes in varying degrees acts like street obstruction, failure to clean sidewalks, cover refuse bins or dispose wastes properly.

3.3.13 Oil in Navigable Waters Act[134]

This is one of the most important Act stemming from the International Convention for the prevention of pollution of the Sea by Oil[135]. It is specifically referable to oil products. This Act relates to purposeful discharge of oil into water as well as spillage by the provisions as hereunder stated:

[133] LFN 2004 H5.
[134] Came into force on 22nd April, 1968
[135] . In 1954 to 1962 aimed at protecting navigable waters of Nigeria.

Subsection (1) if any oil to which this section applies is discharged form a Nigerian ship into a part of the sea which in relation to t that ship, is a prohibited sea area, or if any mixture containing not less than 100 parts of oil to which this section applies… the owner or master of the ship shall subject to the provisions of this Act be guilty of an offence under the section.

Yet subsection (2) provides that the section applies to:

a. crude oil, fuel and lubricating oil and
b. heavy diesel oil or
c. any other description of oil….

It is worthy to note the provisions of section 3 subsection 1 on the categorization of discharge of oil into Nigerian waters thus:

If any oil or mixture containing oil is discharged into waters… from any vessel, or from any place on land or from any apparatus used for transferring oil from or to any vessel (whether to or for a place on land…

if the discharge is from a vessel, the owner or master of the vessel or

if the discharge is from a place on land, the occupier of the place or

if the discharge is from apparatus used for transferring oil form or to a vessel the person in charge of the apparatus is guilty of an offence under this section[136].Curiously this same Act provided a defence to the Oil industry offenders

[136] In subsection (2), it was made clear that the section refers to whole of the sea within the seaward limits of the territorial waters of Nigeria and all other waters (including inland waters) which are within those limits and are navigable by sea-going ships.

in section 4 viz: subsection (2) where a person is charged as mention in subsection (1) it shall be defence.

that the oil or mixture escaped in consequence of damage to the vessel, and that as soon as possible or practicable.. all reasonable steps were taken for preventing or for stopping or reducing the escape of oil or mixture

that the oil or mixture escaped by reason of leakage care and that as soon as practicable reasonable steps were taken for stopping or reducing its.

This Act domesticates and gives effect to provisions of the International Convention for the Prevention of Pollution of the sea by oil 1954 to 1962 in Nigeria. This is one of the most important statutes stemming from the International Convention for the prevention of pollution of the Sea by Oil[137]. It is specifically referable to oil and related products. The Act prohibits the discharge of certain oils into areas, designation of prohibited sea areas, discharge of oil into the waters of Nigeria, equipment in ships to prevent oil pollution, penalties for offences, enforcement and application of fines among others.[138] Section 1 prohibits the discharges of crude oil, fuel, lubricating oil and heavy diesel oil from ships into Nigeria's territorial waters or shorelines. Section 3 makes it an offence for a shipmaster, occupier of land, or operator transferring oil to discharge it into Nigerian waters. It also requires the installation of anti-pollution equipment in ships. Section 6 stipulates the punishment for such discharge to consist of a fine, while section 7 requires that the records detailing the occasions of oil discharge be kept.

---

[137] In 1954 to 1962 aimed at protecting navigable waters of Nigeria.

[138] The Petroleum (Drilling and Production) Regulation to the Petroleum Act 1969, Cap 350, LFN 2004

The Oil in Navigable Waters Regulations Of 1968 implements the provisions of this Act[139]. The Regulations, made pursuant to section 5 and 7 of the oil in Navigable Waters Act[140], require ships to install oily-water separator equipment capable of preventing pollution of the navigable waters by oil.[141] The Regulations also require that due precautions be taken when loading. Discharging or bunkering oil to prevent spills, and also those regular inspections of ships are carried out to prevent oil leakages.[142]

The Act and its Regulations therefore provide legal frameworks for enforcing safety and protection of the marine ecosystem and environment in Nigeria. They also contain provisions that could be evoked clean-up of oil spill in the country's territorial waters and compensation for damage to marine ecosystem.

Despite the robust provisions of this Act and its Regulations that make and discharge of oil into a prohibited sea area an offence, the monetary penalties stipulated under sections 6 and 7 of the Act are grossly inadequate and require update to conform with modern realities and to reflect the serious nature of acts of water and marine pollution. This Act relates to purposeful discharge of oil into water as well as spillage by the provisions as hereunder stated:

Subsection (1) if any oil to which this section applies is discharged form a Nigerian ship into a part of the sea which in relation to that ship, is a prohibited sea area, or if any mixture containing not less than 100 parts of oil to which this section applies…

---

[139] ONWA 1968, LFN 2004, CO6.
[140] Ibid.
[141] Ibid.
[142] Ibid.

the owner or master of the ship shall subject to the provisions of this Act be guilty of an offence under the section.

Yet subsection (2) provides that the section applies to:

crude oil, fuel and lubricating oil and;

heavy diesel oil; or

any other description of oil….

It is worthy to note the provisions of S.3(1) on the categorization of discharge of oil into Nigerian waters thus:

If any oil or mixture containing oil is discharged into waters… from any vessel, or from any place on land or from any apparatus used for transferring oil from or to any vessel (whether to or from a place on land…

if the discharge is from a vessel, the owner or master of the vessel or

if the discharge is from a place on land, the occupier of the place or

if the discharge is from apparatus used for transferring oil form or to a vessel the person in charge of the apparatus is guilty of an offence under this section[143].

Curiously this same Act provided a defence to the Oil industry offenders in S.4 (2) which provides that:

[143] In subsection (2) it was made clear that the section refers to whole of the sea within the seaward limits of the territorial waters of Nigeria and all other waters (including inland waters) which are within those limits and are navigable by sea-going ships.

"where a person is charged as mention in subsection (1) it shall be defence"

That the oil or mixture escaped in consequence of damage to the vessel, and that as soon as possible or practicable.. all reasonable steps were taken for preventing or for stopping or reducing the escape of oil or mixture

That the oil or mixture escaped by reason of leakage care and that as soon as practicable reasonable.

The Oil in Navigable Waters Act is concerned with the discharge of oil from ships. The following sections are significant:-

Section 1 (1) prohibits the discharge of oil from a Nigerian ship into territorial waters or shorelines.

Section 3 makes it an offence for a ship master, occupier of land, or operator of apparatus for transferring oil to discharge oil into Nigerian Waters. It also requires the installation of anti-pollution equipment in ships.

Section 6 makes punishable such discharge with a fine of N2, 000 (Two thousand naira).

Section 7 requires the records of occasions of oil discharge.

3.3.14 Oil Pipelines Act[144]

It relates to capacity of the Federal Government through her representative(s) or agent (s) to grant licences to applicants who desire to carryout business in the Oil

[144] The Act came into force on 4th October, 1956

and Gas industry particularly in exploring for oil in the oil fields, mining oil. Usually in Nigeria, it is the Minister for Petroleum, is empowered by law to grant such licences on behalf of the Federal Government to any applicant for survey routes for oil pipelines, construct, maintain and operate oil pipelines. It is trite that the licence are specific to the extent that each licence shall be issued in respect of and authorize the construction, maintenance and operation of one pipeline only[145].

3.3.15 Water Resources Act[146].

The Water Resources Act is targeted at developing and improving the quantity and quality of water resources. The following sections are pertinent: Sections 5 and 6 provide authority to make pollution prevention plans and regulations for the protection of fisheries, flora and fauna. Section 18 makes offenders liable, under this Act, to be punished with a fine not exceeding N2000 or an imprisonment term of six months. He would also pay an additional fine of N100 for everyday the offence continues.

3.3.16 Petroleum (Drilling and Production) Regulation to the Petroleum Act 1969[147]

The Regulations are made under the general powers given to the Ministers under the Petroleum Act. It imposes obligation on the licenses and lessee to take necessary precautions to prevent pollution, control it when it occurs. Regulation 17 (1) (b) restricts licensees from using land within fifty yards of any building, dam, reservoir,

[145] OPA 1956 s3(a)(b).
[146] W2, LFN 2004.
[147] PRRPA 1969, Cap P10, LFN 2004 .

public road. While Regulations 23 and 27 prohibit cutting down trees in forest reserves without permission. In addition Regulation 25 requires that reasonable measures are taken to prevent water courses from pollution during oil production processes. Regulation 36 establishes procedures for safe abandonment and decommissioning of wells. Under Regulation 37 operators must maintain all production apparatus and appliances in good repair and condition, and must carry out all operations in a proper and workmanlike manner to prevent the escape of petroleum into any water, well, spring, stream, river, lake, reservoir, estuary or habour; and to cause as little damage as possible to trees, crops, buildings, structures and other property on land.

The Regulations undoubtedly contain robust provisions to prevent environmental pollution in the Nigerian oil sector. Lack of proper monitoring and enforcement mechanisms, however, limit the overall relevance and utility of the Regulations. Furthermore, another weakness is that information supplied by licensees or lessees are to be treated as confidential (under Regulation 58). The requirement reduces transparency and accountability in enforcement.

3.4 The Objectives of the Agency

The main objective of the Agency is to co-ordinate and implement the National Oil Spill .Contingency Plan for Nigeria. In implementing this plan, the Agency is mandated to carry out about fourteen activities, some of which are;

Establish a viable national operational organization that ensures a safe, timely effective and appropriate response to major or disastrous oil pollution;

Identify high risk areas as well as priority areas for protection and clean up;

Establish the mechanism to monitor and assist or where expedient direct the response, including the capability to mobilize the necessary resources to save lives, protect threatened environment, and clean up to the best practical extent of the impacted site;

Maximize the effective use of available resources of corporate bodies, their international connections and oil spill co-operatives that is Clean Nigeria Associates (CAN) in implementing appropriate spill response;

Ensure funding and appropriate and sufficient pre-positioned pollution combating equipments and materials, as well as function al communication network system required for effective response to major oil pollution.

Provide a programme of activation, training and drill exercises to ensure readiness to oil pollution preparedness response and the management and operational personnel;

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

Provide support for research and development (R & D) in the local development of methods, materials and equipment for oils spill detection and response;

Co-operate with International Maritime Organization and other national, regional and international organizations 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;

Establish agreements with neighbouring countries regarding the rapid movement of equipment, personnel and supplies into and out of the countries for emergency oil spill response activities. Determine and preposition vital combat equipment at most strategic areas for rapid response.[148] The Agency has over the years beefed up its readiness in responding to oil spill by last repeated activation drill exercise carried out from time to time.[149] The essence of this exercise is to ensure the preparedness of oil facility owners in the event of any spill. The climax of this whole exercise is the issuance of an assessment report which reflects the level of preparedness by the company.[150] However, the Nigerian State appears not to be aware or benefit from this function of the Agency. For this reason the researcher is of the view that such reports ought to be publicly published so as to inform everyone.

3.5 Types of Environmental Crimes

[148] NOSDRA Act 2006 s5

[149] Oil Spill and Oily Waste Management Regulations 2011 s38 of S1 No. 26.

[150] Oil Spill and Oily Waste Management Regulation, 2011 s38 of S.1 No.26 is to the effect that owners or operators o facilities with potentials of oil spills or oily waste discharges shall regularly carry out oil spill response equipment audit. To this end the Agency is expected to carry out annual OSCP or SPCCP activation drills or exercise to determine Facilities preparedness to handle potential oil spill risk and thereafter provide the owner or operator of the Facility with an assessment report.

The European Commission sees environmental crime as covering acts that breach environmental legislation and cause significant harm or risk to the environment and human health.[151]For the purpose of this work, the following offences will suffice as types of environmental offences. Amongst which are:

1. Illegal emission or discharge of dangerous substances into air, water or soil.
2. Illegal trade in wildlife.
3. Illegal discharge in ozone-depleting substances.
4. Illegal shipment and dumping of harmful waste.[152]
5. Illegal, unregulated and Unreported (IUU) Fishing
6. Statutory nuisance.
7. Illegal mining of various solid mineral resources
8. Oil spills

Some of the activities recognised in Nigeria as crimes against the environment include but are not limited to:

a. Pollution and contamination of air, land and water;[153]

---

[151]'European Commission, Environmental Crime.' <http://ec.europa.eu/environment/legal/crime/> accessed 18th September, 2019.

[152] Article 3 of the European Council Directive on the protection of the environment through Criminal law states inter alia, that "Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence: (a) the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants; (b) the collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants; (c) the shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked….

[153]. Surface and groundwater control Regulations, 2011 made under S. 34 National Environmental standards and Regulations Enforcement Agency (Establishment) Act

b. Illegal dumping of hazardous wastes[154]

c. Illegal trade in wildlife[155]

d. Gas flaring[156]

e. Illegal logging and timber trade[157]

f. Illegal devegetation and deforestation[158]

g. Illegal discharge of effluents

h. Indiscriminate use of chemicals on the environment.[159]

There are improper methods of harnessing of Nigeria's natural resources. Such as mining in the areas of oil and gas without proper facilities to harness gas which leads to gas flaring, illegal and unregulated mining of gold and other solid minerals thereby creating erosion prone terrains[160]. The principal environmental protection Agencies appears ill equipped for the job due to lack of technological emancipation. There is clear exploitation and degradation of the Nigerian environment due to quest for developmental growth. All these have given rise to overwhelming environmental

---

2007; National Environmental (ozone layer Protection) Regulations 2013; National Environmental (Air Quality Control) Regulations 2013

[154]. Harmful wastes (special criminal provisions etc) Act prohibits deposition of harmful waste and applies to emissions that are injurious or poisonous which pose the risk of death, fatal injury or incurable impairment of physical and mental health; Environmental Guideline and Standards for the Petroleum Industry in Nigeria EGASPIN

[155] . Endangered species (control of International Trade and Traffic) Act Cap E9 CFN 2004, provides for the conservation and management of wildlife and the protection of endangered species, as required under certain international treaties.

[156]. Associated Gas re-injection Act: This law deals with gas flaring activities by oil gas companies, prohibits without lawful permission, any oil and gas company from flaring gas in Nigeria and provides for penalties in the event of breach of permit conditions.

[157]. The National Park Services Act (cap N65 LFN 2004) provides for the conservation and protection of national resources and plants in National Parks.

[158] Ibid

[159] Nuclear safety and Radiation Protection Act; this regulates the use of radioactive substances and equipment emitting and generating ionizing radiation.

[160] Due to the use of daily practices such as open pit mining and cyanide heap leaching, mining companies generate about 20 tons of toxic waste for every 0.333 ounce gold ring. (https://www.brilliantearth.com/gold-miningenvironment).

crimes which are not being addressed for redress. There are threats to many natural species.

The Sahara Oryx has become extinct in the wild[161]. Ecologically, the terrain varies. A large variety of flora and fauna are extinct. The massive illegal mining and hunting excavations greatly led to ecological problems such as erosions, flooding and landslides as witnessed at Nkwelle Ezunaka some years back along the Onitsha to Otuocha road and in the North especially in Jigawa area where illegal mining of gold has created large areas of damaged environment.[162] One of the greatest problems is lack of political will for practical enforcement of laws to curb environmental crime in Nigeria.

The need to provide a satisfactory regulatory governance regime with regard to the environment calls for an assessment of the existing regulatory regime and all activities impacting the environment especially those activities that are carried out in breach of existing laws. The problem therefore, is that existing legislation, information, response and enforcement on activities which harm the environment in Nigeria are grossly inadequate. It is clear that very little is known about environmental crime in Nigeria. For a long time, there was neglect of environmentally harmful activities which continued harm to and degrade the environment. Even prosecuted cases on environmental

---

[161] This type of extinction especially of animals is flourishing because the import of biodiversity to environmental protection is incomprehensivible rather everything is bush meat a delicacy enjoyed by man. See also the Endangered Species Act, 1985.

[162] A USA report in 2010 revealed that illegal mining resulted to dirt in Dareta, Gusau, Zamfara State lead to more than twenty – three times the limit of USA standards killing more than 160 people most of whom are children: quoted in Jim Gambrell, Environmental Damage Looms in Nigeria's lead crisis (USA, Associated Press writer, 2010) June 11th p.12.

degradation were predicated on claims on human rights issues as claimed and decided in SPDC Ltd v Trebo[163] The plaintiff claimed sixty-four Million Naira (N64M) for oil spillage by the Defendant however the Court awarded only Six Million Naira (N6M). The writer believes that this has led to increase rather than abatement of environmental offences. It is easy to see that offences and offenders are treated with love and the victims with ignominy based on environmental laws provisions which trivialise punishments for environmental degradation and environmental crimes.

The researcher is of the convincing opinion that the environment is vital and indispensable to human existence and sustenance. This is based on the inter-dependent relationship between humanity and the environment. For example, all forms of pollution such as, global warming, acid rain, ocean acidification, floods erosion desertification, health challenges, poor agricultural yields, increase in mortality rate etc. These activities do infringe on fundamental rights, of human beings hence the notion that they are unacceptable.

Over the years, there has been difficulty in defining and ascertaining what constitutes an environmental offence or crime, this is mostly because there are relatively few activities which harm the environment which are offences in themselves. Criminal

[163] [1996]4 NWLR (pt 445) p. 657, is an improvement in Oronto Douglas v SPDC Ltd & Ors Unreported case with suit No FC/CS/573/93 when a claim against Shell PDC Ltd & Ors on pollution was held that the Plaintiff could not show that he has legal interest on his communities' polluted environment. This was so held despite the fact Nigeria belong to the league of nations that recognize public interest litigation. It demonstrated in Nigeria service to environmental protection

legislations are mainly aimed at addressing generally unacceptable behaviors, this of course has somehow found its way into the shores of environmental protection and conservation. The question that follows is, what are environmental offences?

The answer appears simple as environmental offences or crimes include all offences created either by statute or developed under the common law that relate to protection of the environment.[164] Such activities, either by way of an action or omission deleterious to the equilibrium in the environment, which the law prohibits. It is truism that for an act to be an offence or a crime, such an act must be prohibited by law with specific punishment stipulated by a state.

In line with the above backdrop, Environmental offence could also be described as any act or omission which breaks environmental law and causes major harm or risk to the environment or human health.[165] The above definition given on the subject matter went beyond such offence being harmful to the environment alone, but also points out that the said act or omission must in or of itself be detrimental and injurious to the wellbeing of any human being. This does not run contrary to the earlier definition which focuses on acts or omissions that offend the protection of the environment. This is because, any act or omission that is deleterious to the environment, is also deleterious to the health of human beings. To further buttress this assertion, the former President of the United States of America[166] posited that: "any throwing out the balance of resources of nature throws out of balance also the lives of human beings."

---

[164] Available at: https://www.lexisnexis.com/uk/lexispsl/corporatecrime/document/391421/58XP-5Y31-F188-N1ND-00000-00/Environmental_offences_overview#. Accessed 17th September 2019.

[165] Available at: https://ec.europa.eu/info/energy-climate-change-environment/implementation-eu-countries/criminal-sanctions-environmental-offences_en. Accessed 18th September 2018.

[166] Franklin Delano Roosevelt, President of the United States, (1933-1945).

3.5.1 Hydrospheric Crime

Illegal discharge of industrial effluent into any type of water as seen in USA v Trail Smelter,[167] where a Canadian Company's effluent was found in a United State of America water and it was held as transboundary water pollution. The matter was between Canada and USA. It was referred to arbitrators. The decision was expressed in the following terms:

> No State has the right to use or permit the use of its territory in such a way as to cause injury by flumes in, or to the territory of another, or the property or persons therein, when the case is of serious consequence, and the injury is established with clear and convincing evidence. It provides for state sovereign right to exploit their own resources pursuant to their environmental policies, but not to the detriment of other States. The responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states, or areas beyond the limits of national jurisdiction.

This decision was the basis for the Declaration of principle 21 of the United Nations Conference on the Environment in June 1972 at Stockholm.

3.5.2 Crime against Land

Trees play important role in protecting the environment. They constitute the principal source of rural energy and they yield medicinal and industrial products for use by individuals and industries. Nearly 4 million hectares of trees are now being

[167] (1938/41)3 RIAA .

deforested or degraded annually in West Africa. The rate of destruction is alarmingly high in Nigeria, Cameroon and Ivoy Coast.[168]

Again, basically the land receive whatever may be illegally disposed in any water. In addition, there may be illegal mining on land, illegal burrow-pits which lead to erosions and desertification. There is also burning of bushes and trees and indiscriminate dumping of refuse or waste including hazardous wastes.

3.5.3 Atmospheric Crime

A typical example of industry without the right technology is the ever present flaring of Gas as seen in Nigeria. The commonest is emissions whether from industries or by individuals burning trees, vehicular emissions, illegal mining and bursting of elements such as sulphur yielding to sulphuric acid improper inceneration thereby production of pungent toxic odour.

All the above examples are inimical to health and lives and are clearly crimes against the environment. On June 1, 2016 a Cable News Network (CNN) world report on Africa view contained information that 4 of the worst cities in the world for air pollution are in Nigeria; according to data released by the World Health Organization (WHO). Onitsha, Nigeria had the undignified honour if being labeled the word's most polluted city for air quality, when measuring small particulate matter

[168] Food and Agriculture Organistion of the United Nations; Land and environmental degradation and desertification in Africa www.fao.org/3/x5318E/x5318e02.htm. accessed 18th September 2019.

concentration (PMIO), the three other cities were; Kaduna, Aba and Umuahia. The report further revealed the contributing factors to be;

1. The reliance or solid fuels for cooking.
2. Reliance of generators for electricity supplies.
3. Traffic pollution from very old cars.
4. Unregulated car emissions.

Rapid economic development and Industry without the right technology.[169]

The Three Tiers of Oil Spills

It is apt to note at this juncture that there are three tiers of spills recognized by the National Oil Spill Contingency Plan.[170] They are;

Tier 1: Operational type spills of volume is between 0-25 barrels to inland waters or 0-250 barrels to land or coastal/offshore waters that may occur at or near a company's own facility as a consequence of its activities.

Tier 2: A larger spill volume of 25-250 barrels to inland waters or 250-2500 barrels to land or coastal/offshore waters in the vicinity of a company's facilities.

Tier 3: This is a major spill volume greater than 250 barrels to inland water ways or above 2500 barrels to land or coastal/ offshore waters where substantial further resources will be required and support from a national (Tier 3) or international co-

---

[169] Dirtied by success? Nigeria is home to city with worst PMIOlevelshttps://edifionm.caa.com/2016/05/31/Africa/Nigeria-cities-pollution/indez.html? = https:%3A%2F%2Fwww Accessed 19th September 2019.

[170] The National Oil Spill Contingency Plan For Nigeria. (Revised 2013) Pp. 46-47

operative stock pile, like the Oil Spill Response Limited (OSRL), may be necessary.[171]

The essence of this distinction is to determine the kind of response to be deployed into a particular spill incidence. For a tier one spill is expected that the operator should be able to deploy its internal safety measures to contain and clean up the particular spill. For that of tier 2 spill, the response is expected to be mobilized from more than one operator in collaboration with other industries and possible government agencies on a mutual aid basis. However, where it is a tier 3 spill or a major tier 2 spill, the National Control and Response Centre shall for this purpose activate the NOSCP and through the office of the Director General of the Agency, co-opt all Government Ministries and Agencies specified in the Second Schedule to the Act.[172] The Agencies and Ministries are;

1. Nigerian Institute of Oceanography and Marine Research.
2. The Federal Ministry of Works.
3. The Federal Ministry of Health.
4. The Federal Ministry of Transport.
5. The Federal Ministry of Information.
6. The Federal Ministry of Water Resources and the Federal Ministry of Agriculture and Rural Development.
7. The Ministry of Communications.
8. The Federal Ministry of Aviation (NIMET).
9. The National Emergency Management Agency.

[171] Ibid
[172] The Second Schedule to the NOSDRA Act 2006 is usually linked to Section 19(1), (2) and also Section 7 (g) (ii).

10. The Oil Producers Trade Section/Lagos Chamber of Commerce (OPTS).
11. Ministry of Science and Technology.
12. Ministry of Defence.
13. The Nigerian Police Force.[173]

It must be stated that each of these Ministries and Agencies of the Federal Government are expected to play specific roles in the management of such a massive spill in the event there is one. For example, the Nigerian Institute of Oceanography and Marine Research would be expected to give crucial technical assistance with data on oil spill trajectory for spillages in brackish and ocean waters and also monitor the extent of impact in the coastal and marine environment. The Ministry of Defence is expected to inter alia deploy its expertise in evacuating victims or stranded residents to designated area and render assistance to distressed vessels. The OPTS is expected to provide the operational and ESI maps[174] of the areas affected or likely to be affected by an oil spill.

In 2013, a drill exercise was carried out by the Agency in Port Harcourt. The NOSCP was activated and the response readiness of almost all stakeholders in the industry was tested. The Director-General of NOSDRA Sir Peter Idabor, said the exercise was in collaboration with Shell Nigeria, adding that the essence of the drill was to x-ray the effectiveness of collaboration by stakeholders. He added that the stakeholders in

[173] Ibid.
[174] ESI: Environmental Sensitivity Map.

the spill situation include the Army, Navy, Customs and all parties that need to be called up in the case of oil spill.[175]

At this juncture it is apt to state that Section 18 of the NOSDRA Act provides for establishment of a National Control and Response Centre. The Centre is expected to act as a report processing and response co-ordinating centre for all oil spillage incidents in Nigeria. The Centre is to receive reports of oil spillages from the zonal offices and control units of the Agency. They are also saddled with ensuring compliance monitoring of all existing legislation on environmental control, surveillance for oil spill detection monitoring and coordinate responses required in plan activation.

Section 19 of the NOSDRA Act 2006 saddles the Agency with a further set of responsibilities in the management of oil spillages in the country especially as it relates to major or disastrous oil spills. The summary of these functions are[176]:

1. In collaboration with other Agencies co-opt, undertake and supervise, all those provisions as set out in the Second Schedule to the NOSDRA Act.
2. Assess the extent of damage to the ecology by matching conditions following the spill against what existed before (reference baseline data and Environmental Sensitivity Index maps).

[175] http://www.dailytrust.com.ng/daily/index.php/environment/11975-nosdra-activates-2013-national-oil-spill-contingency-plan#RGb7bvh6dVTpuTu7.99. Published 11th Dec, 2013. Accessed 19th September 2019.

[176] It is worthy to note that these sets of functions provided for in section 19 of the Act were the functions being referred to in Section 7(g)I of the Act. Section 7(g)I provides that the National Control and Response Centre shall for the purposes of a Tier 3 Oil Spill response, undertake such functions as specified under section 20 of this Act, .. It ought to be Section 19 of the Act and not Section 20.

3. Undertake a post spill impact assessment to determine the extent and intensity of damage and long term effects;
4. Advise the Federal and State Governments on possible effects on the health of the people and ensure that appropriate remedial action is taken for the restoration and compensation of the environment.
5. Assist in mediating between the affected communities and the oil spiller.
6. Monitor the response effort during an emergency, with a view to ensuring full compliance with existing legislation on such matters;
7. Assess any damage caused by an oil spillage.
8. Expeditiously process and grant approval for any request made to it by an oil spiller for the use of approved dispersant or the application of any other technology considered vital in ameliorating the effect of an oil spill.
9. Advise and guide the response efforts as to ensure the protection of highly sensitive areas, habitats and the salvation of endangered or threatened wild life.
10. Monitor the clean-up operations to ensure full rehabilitation of the area.

In a bid to discharge these functions effectively the Agency deemed it fit to make specific regulations to address issues touching on oil spill recovery, clean-up, remediation, damage assessment and oily waste management.[177]

Section 19(3) of The NOSDRA Act mandates the Agency to co-operate with an oil spiller in the determination of appropriate measures to prevent excessive damage to the environment and communities. They are also mandated to mobilize internal resources and also assist to obtain any outside human and financial resources that

[177] Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations 2011 s1, No. 25 and Oil Spill and Oily Waste Management Regulations, 2011 s1 No. 26.

may be required to combat any oil spill and also assist with the assessment of damage caused by an oil spillage.

3.6 Need to Collaborate with International Bodies

Section 5(f-j) of the NOSDRA Act 2006 emphasized the need for international collaborations, drill exercises, researches and interactions with a view to ensuring adequate preparedness for oil spillages in high risk areas. These provisions of the Act were given a profound expression following the appointment of Nigeria as the host country for spill response in West Africa by the GIWACAF.[178] In order to effectively monitor and manage trans-boundary oil spills, Nigeria and its West African counterpart, Cameroon commenced a two day bilateral drill exercise geared towards testing communication between the two countries. Officials from various government parastatals, including the Nigerian Army, Customs, Navy, and other relevant stakeholders in oil spill management from both countries were in attendance.[179]

3.7 Functions of the Agency

There are three major government regulatory agencies which are in charge of ensuring enforcement of environmental laws in Nigeria: the National Environmental Standards Regulations and Enforcement Agency (NESREA), the Federal Environmental Protection Agency (FEPA) and the National Oil Spill Detection and Response Agency (NOSDRA). In this section, these three agencies will be discussed

[178] Global Initiative for West, Central and Southern Nigeria.
[179] 'Nigeria, Cameroon collaborate on oil spill containment'; Published by National Mirror (18th March, 2015) www.latestnigeriannews.com Accessed 25th September, 2019.

in light of the prescribed steps that they take in ensuring environmental protection, as well as enforcement of environmental laws, and the actions they have taken to sanction those who violate environmental laws.

The National Environmental Standards Regulations and Enforcement Agency (NESREA)

This is the principal federal agency which is tasked with regulating and enforcing environmental standards, regulations, laws and guidelines in Nigeria. Its key mandate is the protection and the development of the environment, and sustainable development of Nigeria's natural resources. Its functions and powers are contained in Sections 7 and 8 of the NESREA Act, and include the authority to ensure compliance with environmental laws, local and international, on environmental sanitation and pollution prevention and control through monitory and regulatory measures.[180] The strategies of the Agency include but are not limited to ensuring inter-sectoral linkages between relevant bodies with respect to development planning and decision making processes, adopt a system of national accounting to internalize environmental costs, developing environmental awareness programs for nationwide implementation; embarking on continuous compliance monitoring and environmental enforcement programs; promoting voluntary environmental compliance programs, undertaking aggressive public awareness campaign and advocacy at all levels to properly communicate the concept of voluntary compliance and should enlist the support and participation of all key stakeholders including trade unions, professional and business associations, civil society organizations, traditional, natural and faith-based organizations, conducting baseline studies on the state of the Nigerian environment

[180] Prof Damilola S. Olawuyi, *The Principles of Nigerian Environmental Law*, pg 43

and build a databank, and monitoring the state of the Nigerian environment on a continuous basis and publish regular reports to guide policy formulation and decision-making.[181]

The NESREA in enforcing environmental laws has a number of actions it may take against violators and the power and specifications of these actions are encapsulated in Sections 28-32 of the NESREA Act. Section 28 provides that the Minister shall by regulations prescribe any specific removal method, financial responsibility level for owners or operators of vessels, or onshore or offshore facilities notice and reporting requirements. More so, Section 29, provides that The Agency shall co-operate with other Government agencies for the removal of any pollutant excluding oil and gas related ones discharged into the Nigerian environment and shall enforce the application of best clean-up technology currently available and implementation of best management practices as appropriate. Section 30 (1) (a)-(g) further provides for the power of an agent of the Agency to include but is not limited to the following:

Enter and search with a warrant issued by a Court, any premises and other structure, at all times, for the purpose of conducting, inspection, searching and taking samples for analysis which he reasonably believes, carries out activities or stores goods which contravene environmental standards or legislation;

Examine any article found pursuant to paragraph (a) of this subsection, which appears to him to be an article to which this Act or the regulations made under apply or anything which he reasonably believes is capable of being used to the detriment of the environment. Take a sample or specimen of any article to which this Act or the

[181] <http://www.nesrea.gov.ng/about/strategies.php> accessed 29th September, 2019.

regulations apply or which he has power to examine under paragraph (b) of this subsection;

Open and examine, pursuant to paragraph (a) of this subsection, any container or package which he reasonably believes may contain anything to which this Act or its regulations apply or which may help in his investigations;

Examine any book, document or other record found pursuant to paragraph (a) of this subsection, which he reasonably believes may contain any information relevant to the enforcement of this Act or the regulations and make copies thereof or extracts there from; In addition to this, it is provided for in Section 31 that a person who obstructs an officer of the Agency in the performance of his duties under section 3 of this Act commits an offence and is liable on conviction to a fine of not less than N 200,000 for an individual or to imprisonment for a term not exceeding one year or to both such fine and imprisonment, and an additional fine of N20,000 for each day the offence subsist and in the case of a body corporate, it shall be liable for a fine of N2,000,000, on conviction and an additional fine of N200,000 for everyday the offence subsist.

The NESREA recently sealed the Lagos based Nigerian Aluminium Extrusions Limited for violation of environmental laws.[182] Apparently, the Head of NESREA's enforcement at that time, Kolawole Gbenga, reported that the company was served numerous violation and abatement notices prior to the exercise. The Agency discovered that some companies and facilities were into the production of different

[182] Adebowale Martins, 'NESREA seals NIGALEX for violating environmental laws' *The Eagle Online* (5 October 2015) <http://theeagleonline.com.ng/nesrea-seals-nigalex-for-violating-environmental-laws/> accessed 29th September 2019

products without protecting the environment and Kolawole Gbenga stated that "it has not been complying with some relevant environmental laws such as the disposal of their waste and untreated effluents… If we must site a company, we are expected to follow and comply with relevant laws put in place to protect the integrity of the environment." The Agency issued compliance notices three times, and also issued two abatement notices as warning, but the facility owners failed to comply and they therefore applied the law. The company was therefore expected to correct the anomalies before the unsealing by the Agency. The warning notices were served to the company after the first inspection by the agency. The company was also instructed to install an effluents treatment plant, which it failed to do. It also failed to obtain an Environmental Impact Assessment certificate and submit their Environmental Audit Report to the Agency. The Agency has also succeeded in making telecommunications companies to comply with environmental laws . The Agency has said that telecommunication companies no longer flout environmental rules and regulations in the country. The DG stated that the telecommunication operators have also realized the need to cooperate with the agency especially on the Environmental Impact Assessments (EIA) before erecting their base stations.

The Agency also pursues sensitization projects to make the public more aware of the environmental problems that we are facing, and it urges Nigerians to ensure compliance with relevant environmental statutes and regulations. For example, Director-General, National Environmental Standard & Regulation Enforcement Agency (NESREA), Dr. Lawrence Anukam, stated this in his speech at the 6th *Environment Outreach Magazine* Public Lecture which took place at the Nigerian Institute for International Affairs (NIIA) in Lagos recently. Host of the

event and Publisher of the Environment Outreach Magazine, Chief Noble Akenge, described the theme of the Lecture, which is "Redefining Nigeria's Environmental Agenda: Imperatives for Compliance Monitoring and Enforcement" as very apt in view of the poor or negative attitude of Nigerians towards obeying the law especially environmental laws and regulations.[183]

The Federal Environmental Protection Agency (FEPA)

The defunct Federal Environmental Protection Agency had the overall responsibility of ensuring and enforcing a comprehensive system of environmental management in Nigeria. It was mandated to initiate policies that relate to environmental research and technology. The Agency virtually has unlimited powers and functions for the protection of the Nigerian environment.

The enforcement powers of the Agency are contained in Part IV of the FEPA Act[184], titled "Miscellaneous Provisions; Enforcement Powers". Section 26 of the Act provides for the power of an officer of the Agency to require to be produced, examine and obtain copies of any certificate, licenses, permit or any other such document as it may deem fit to require, as well as require to be produced and examine any appliance or device used in relation to environmental protection. Also, Section 27 provides for the power to search, seize and arrest, stating that an officer may without a warrant, any land, building, vessel or any other structure in which it is believed that an offence against the Act has been committed. The officer may also perform tests and take samples of any substance that is related to the offence, cause

[183] 'NESREA DG Urges Compliance with Environmental Laws' *EnviroNews Nigeria* (20 September 2015) <http://www.environewsnigeria.com/nesrea-dg-urges-compliance-environmental-laws/> accessed 29th September 2019
[184] FEPA Cap F10, LFN 2004

to be arrest any person who is believed to have committed the offence the officer also has the power to seize any item or substance which he has reason to believe has been used in the com mission of such offence or in respect of which the offence has been committed. Secti on 28 also makes it an offence for any person to obstruct any authorized officer in the exercise of the powers conferred on him by the Act, or any person who fails to to comply with any requirements made by the authorized officer in accordance with Section 26 of the Act.

There has however been action brought against the Agency by communities in Ewekoro, Ogun State. The quarry site of West African Portland Cement (WAPCO) in the year 2000, threatened to drag the Agency and WAPCO to court, if the persistent degradation of their villages continue without a matching compensation and remediation to the villagers. A four-page letter written on behalf of Lapeleke, Olujobi, Oke-oko Sekoni, Oke-Oke Egbado Communities Development Association (LAOOOCDA) by one Bamidele Ogundele, with reference number BPO/170/2000 also intimated FEPA of its intention to join the Ogun State Attorney General and Ministry of Environment and Physical Planning in the impending suit.[185] Unfortunately, not much more information on the supposed suit has been provided.

3.8 Forms of Degradation of the Environment

There are many forms of polluting the environment. In this work it will be categorised into acts by Individuals, Corporations and Nature.

[185] Adewale Busari 'Nigeria: Community Threatens FEPA over Environmental Act' *AllAfrica.com* (12 July 2000) <http://allafrica.com/stories/200007120236.html> accessed 29th September, 2019.

A. Form of Environment Degradation by Individuals.

It is obvious that human beings as individuals or persons degrade the environment in various ways such as;

1. Indiscriminate disposal of solid and wet wastes. Sometimes wastes will decay or decompose to produce stench foul odour or noxious odour which are harmful to both plants and animals.
2. Illegal mining of precious stone.
3. Illegal excavatious whether by carrying stones or sound (Barr-pit) for purpose of construction.
4. Indiscriminate felling of trees for housing estates without feasibility studies.
5. Illegal dumping of refuse into water bodies.
6. Use of chemicals for fishing.
7. Bushing burning.
8. Use of chemicals on land resulting to land infertility thus poor agricultural yields.
9. Burning of tyres thereby releasing of carbon monoxide into the atmosphere.
10. Indiscriminate channelling of water causing erosion and so on and so forth.

B. Form of Environmental Degradation by Corporations.

The corporate pollution of the environment is very serious, such pollution can occur by:

a. Oil spill unto land and into bodies of water.

b. Discharge of effluents.

c. Gas flare

Escape of dangerous gases for example sulphur which in combination with oxygen yields sulphur dioxide.

Deposition of toxic wastes

Indiscriminate disposal of pharmaceutical waste

Indiscriminate disposal of hospital wastes

Construction vibrations

Quarrying and pollution of the atmosphere and land.

Construction noise.

C. Form of Environmental Degradation by Nature

Natural environmental degradation causes can cause by:

a. Earthquake,
b. flooding,
c. desertification,
d. erosion,
e. lightning and thunder
f. strange fires
g. land slides

3.8.1 Analysis of Quality Air and Effects of Pollution to Air

Air equates to atmosphere. Atmosphere of the earth is the layer of gases. The major atmospheric constituents are nitrogen, oxygen and argon .

By volume dry air contain

Name	Formula	in ppmv[(B)]	in//%
Nitrogen	N_2	780,840	78.084
Oxygen	O_2	209,406	20.946
Argon	Ar	9,340	0.9340
Carbon dioxide	CO_2	400	0.04[8]
Neon	Ne	18.18	0.001818
Helium	He	5.24	0.000534
Methane	CH_4	1.79	0.000179

It is noteworthy that many other gases called trace gases among which are greenhouse gases such as carbon dioxide, methane, nitrous oxide and ozone. Industrial pollutants are present as gases or aerosols either in elementary forms or compounds.

Worthy to note that the atmosphere is further divided into 5 (five) layers thus;

Troposhere - o - 12km (0 – 7 miles)

Stratosphere - 12 - 50km (7-3.1miles)

Methosphere	-	50	-	80km (31 – 50 miles)
Thermosphere	-	80	-	700km(50 – 440miles)
Exosphere	-	700	-	10,000km (440 – 6,200miles)[186]

The two most important to human existence are the trosphere and stratosphere. Everything must be done to ensure the quality of air within these layers.

It is obvious that the gases when emitted in qualities other than the normal to ensure quality of the atmosphere spells danger to humanity. Yet the atmosphere is polluted of atmosphere by any form of emission of gases or by gas flares should be taken as criminal acts or omissions resulting to offences that ought to be charged under the offences as provided in NESREA and NOSDRA. Infact the punishment should be severe to act as a deterrence as applied in other climes.

Naturally, the atmosphere ought to be pristine for emphasis; it must be clean, fresh and dry. Pollution is the introduction of dangerous substance whether naturally or man-made into the atmosphere. This can be caused by all forms of combustion like gas flaring, bush burning escape of chemical substances into atmosphere either accidently, negligently or as planned. Depending on the mode and extent of pollution, it could amount to environmental crimes. Incineration of wastes, atimes can be very pungent long with emission of carbon monoxide (co), distant transportation fuel combustion from power plants and industries plus discharge of poisonous waste and substances into the atmosphere.[187]

---

[186] <https://en.wikipedia.org/wiki/Atmosphere> Accessed 30th September 2019

[187] A K Usman, Environmental Protection Law and Practice (Ibandan, Ababa Press Ltd 2012) p. 59.

Pollution in Nigeria has not received sufficient formal attention. This is evident for the following reasons:

Inadequate Information on What Constitutes Pollution.

The groundbreaking research undertaken in other jurisdictions underscore the need for greater attention to be paid to environmental crimes with reference to Pollution. The standards for the information be that included in many international instruments and regional instruments on environment.

Earlier domestic research in environmental law had not paid much attention to environmental crimes. The fact is that Nigerians rarely discuss environmental harm.

Inadequate training on detection of Environmental Crimes Detection.

Environmental crime is driven by greed and ignorance[188] Nigeria has enacted numerous statutes aimed at protecting the environment including the Constitution[189], the repealed FEPA Act[190], and currently the NESREA Act[191]. There are many other statutes which seek to preserve or conserve the environment and natural resources in it. The efforts to protect the environment have been plagued by ineffectiveness and outright failure in some areas. The protection of the environment is an important idea that sustains the existence of mankind because man must live in an environment. Recently some Nigerian citizens have challenged environmental pollution though most times the Court trivialise such actions. However, in Jonah Gbemre v Shell

[188] P Grabosky, Eco-Criminality: Preventing and Controlling Crimes Against The Environment, International Annals of Criminology 41(1-2)p.237.
[189] CFRN 1995 as amended.
[190] Federal Environmental Protection Act.
[191] National Environmental Standards Regulation Agency, 2005.

Petroleum Development Company (SPDC) & Ors. the Court delivered a landmark ruling as earlier discussed.

Ineffective Laws against Harmful Activities & Environmental Crimes.

The paucity of data on environmental crimes presents a difficulty for researchers and development planners who must find it difficult to have access to information relating to environmental crime. This is attributable to blindness on the part of the government, its agencies and the citizenry in Nigeria. The neglect of environmental crimes is the greatest contributor to the inefficacy of the regulatory regime, paucity of research, and persistence of environmental crimes in Nigeria.

The Normal Atmosphere Composition

Nitrogen 78% by volume

Oxygen (Oz) -21%

Argon – 0.93%

Carbon Dioxide – 0.03%

Other Gases – 0.04% (such as hydrogen, neon, helium, xenon, krypton methane and nitrous oxide)[192].

The effects are numerous such as excessive heat, sudden death and environmental hazard. Pointedly can cause on human health diseases such as physiological and pathological changes which may lead to death, blindness. It can affect materials -roof

---

[192] M T Okoroudu – Fuban, *Law of Environmental* Protection (Ibadan, Caltop publications (Nig) Ltd 1998), p. 387.

tops as very visible in the Niger-Delta area (soothes roofs which in turn affect human beings residing in those places). On plants it can affect good yields thus harvest will be very poor which will also result to poverty[193].

3.8.2 Effects of pollution to Water

Water pollution is one of the most critical causes of ailments to plants and animals which include human beings. The gravity of pollution of any water body rests in the fact that it can flow into different water bodies across borders as seen in the USA v Trail Smelter[194]. The effects can be compartmentalised as follows:

Water pollution causes harm to the health of human beings, disease such as cholera typhoid breathing problems skin diseases, lack of drinking water thus scarcity of water and so on and so forth.

Damage to Properties, such as land by causing erosion, Roofs by causing corrosions and leakages where acid rain results, it can cause damage to buildings, death of trees and various kinds of poisoning which will eventually affect plants and animals.

Oil pollution of water bodies destroy aquatic and marine lives. It can cause growth of water hyacinths and block navigation or canoeing.

3.8.3 Effects of Pollution to Land

This can result to Desertification Erosion thus destruction of the earth surface infertile land thus no vegetation poor harvest after cultivation economic disaster.

[193] Ibid p. 395.
[194] (1938/41) 3RIAA.

CHAPTER FOUR

ANALYSIS OF THE WORK OF ENVIRONMENTAL AGENCIES AND ATTITUDE OF COURTS IN NIGERIA AND OTHER JURISDICTIONS

4.1 Analysis of the Work of Environmental Agencies

Ever since 1956 when oil was first discovered in Nigeria at Oloibiri in present day Bayelsa State, exploration activities have brought with it, grave environmental problems. Oil spill, environmental pollution and degradation, destruction of landscape among other issues have continued to plague the environment leading to loss of arable farm lands, aesthetic environment, fishing activities, revenue and sometimes lives.[195]1 The people in their resolve to protect their environment have adopted various mechanisms ranging from militancy to dialogue, and from open confrontations with companies operating in the area, to institution of court actions. In the search for justice, there have been frustrations and dashed hopes. Legal technicalities such as locus standi and jurisdiction both at the domestic level and international level as epitomized in Kiobel on the one side, and poverty on the other have painfully been exploited by certain unscrupulous multinational corporations to deny victims of environmental pollutions, justice.[196]

Thus Nigeria, the most populous nation in black Africa, rich in oil but underdeveloped has witnessed a monumental share of environmental problems which

---

[195] John Vidal, 'Niger Delta Oil spills Clean-up will take 30 years, says UN', The Guardian, Thursday August 4 2011.
[196] No. 06- 4800, 2010 U.S. App. LEXIS 19382, at 1 (2d Cir. Sept. 17, 2010).
150 Mmadu: Judicial Attitude to Environmental Litigation.

justify local and international attention.[197] The need to use law as a vehicle in the regulation, management and protection of the environment has thus become paramount.[198]

Unfortunately, the quest to attain redress for environmental problems have not been the most straightforward endeavor in Nigeria. Aggrieved parties therefore resort to litigating environmental problems before international courts.[199] Using the jurisprudence evolved in the US case of Kiobel v. Royal Dutch Shell (Kiobel) as a reference point, the author posits that extraterritorial litigation may not be a long term ingenious solution to the problem of attaining environmental justice in Nigeria.[200] This chapter analyzes the legal and technical challenges perennially faced by environmental litigants in Nigeria, such as Locus Standi, Pre-Action Notice and Limitation of Action. This chapter argues in favour of a more flexible interpretation of the law in order deliver justice to victims of environmental problems in Nigeria. It argues that the current heightened activities of oil theft and other problems in the Niger Delta would remain and may rise on a geometric scale if justice is continually denied to victims of oil exploration in Nigeria. It is imperative for the Nigerian judiciary to play a more proactive role in delivering environmental justice to the common man and woman. For Nigeria to make progress in protecting the

---

[197] See UN Environment Programme, Nairobi, Kenya - Africa Environment Outlook, News Release, 2002/50, Pp.1-4.

[198] Ibid at Pp. 262-3.

[199] Ibid at 474-480.

[200] *Kiobel v. Royal Dutch Petroleum Co. et al.,* No. 06- 4800, 2010 U.S. App. LEXIS 19382, at 1 (2d Cir. Sept. 17, 2010). Nigerian plaintiffs filed *Kiobel* in 2002, alleging that Royal Dutch Petroleum Company and Shell Transport and Trading Company, through a subsidiary, collaborated with the Nigerian government to commit human rights violations to suppress lawful protests against oil exploration in the Ogoni region of the Niger Delta. In 2006, the district Court granted in part and denied in part the defendants' motion to dismiss the suit. In particular, the district court granted the motion to dismiss for the claims of aiding and abetting extrajudicial killing, forced exile, property destruction, and violations of the rights to life, liberty, security, and association, holding that customary international law did not define these violations with the specificity required by *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).

environment, Nigerian judges will need to be more flexible in interpreting the law and in exhibiting zealous judicial activism whenever issues of environmental abuse are brought before them.

4.2 Scope of Access To Environmental Justice In Nigeria And the Question of Jurisdiction

Activities of oil companies in Nigeria may result to both civil and criminal liabilities. As such, environmental litigation can take many forms, including civil actions based on tort, contract or property law, criminal prosecutions, public interest litigation, enforcement of fundamental human rights or complex issues which may arise when cases involve transboundary environmental harms.[201] At common law, an action in an environmental litigation may be based on either negligence, nuisance or under the rule laid down in Rylands v. Fletcher.[202] Each of these common law actions, have some essential requirements which, the plaintiff has the onus of proving.[203] These torts can be used to curb environmental pollution and promote conservation. Apart from the problems that an award of damages is dependent on certain technicalities and that such damages may not even be sufficient to redress the harm, the major problem with case law is that it depends on a willing plaintiff. Where the litigation costs are too high or because of litigation apathy, or lack of means these torts go unchecked. More telling is the fact that they cannot be used on an efficient basis for

[201] Tobi, N, *supra* note 6.
[202] 3 H. & C. 774, 159 Eng Rep 737 (Ex. 1865).
[203] Ladan *supra* note 4, Chapters 3 and 4.

public regulation of the environment. This explains why much of environmental law is statute based.[204]

Many environmental legislation impose strict liability or and provide for compensation rather than damages.[205] For example, the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (NESREA Act), together with other environmental statutes form the backbone of Nigeria's environmental law.[206] A critical analysis of the NESREA Act and selected environmental statutes however demonstrate why the legal mechanisms in place for protecting the Niger Delta have failed. For example, it is difficult to understand why the oil and gas industry, arguably the greatest environmental threat to Nigeria, is excluded from so many of the NESREA Act's provisions. Part 2 of the NESREA Act, including sections 7 and 8, detail the functions and powers of the Agency and council.[207] These sections are most illustrative of the exceptions in place for the oil and gas industry. Section 7 provides exceptions in five of its thirteen provisions, requiring the Agency to:

1. Enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector;

2. Enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector;

---

[204] See Ajomo and Adewale, *Environmental Law and Sustainable Development in Nigeria,* (ed.) (1994); Nigerian Institute of Advanced Legal Studies, Lagos, at 11-66.

[205] Ibid.

[206] National Environmental Standards and Regulations Enforcement Agency (Establishment) Act No. (25) (2007) 94:92 O.G., A635 (Nigeria) [hereinafter NESREA Act].

[207] *Ibid* .

3. Create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions.[208]

4. Conduct public investigations on pollution and the degradation of natural resources, except investigations on oil spillage,

5. Submit for the approval of the Minister, proposals for the evolution and review of existing guidelines, regulations and standards on environment other than in the oil and gas sector including atmospheric protection, air quality, ozone depleting substances, noise control, effluent limitations, water quality, waste management and environmental sanitation, erosion and flood control, coastal zone management, dams and reservoirs, watershed, deforestation and bush burning, other forms of pollution and sanitation, and control of hazardous substances and removal control methods,

6. Develop environmental monitoring networks, compile and synthesize environmental data from all sectors other than in the oil and gas sector at national and international levels.[209]

Thus, the exceptions in part two bar the Agency from enforcing hazardous waste regulations in the oil and gas sector. The Agency cannot monitor, license, research, survey, study, or audit the sector. It may not propose evolution of the environmental regulations for, promote compliance in, or conduct investigations of the oil and gas sector. Thus, while the Agency is technically allowed to 'enforce compliance with laws, guidelines, policies and standards on environmental matters' it may not observe

[208] *Ibid* .
[209] *Ibid* section 8.

the oil and gas sector in any way to determine the level of compliance by stakeholders.[210]

The NESREA Act provides the oil and gas sector additional exceptions in sections 24, 29, and 30. Under section 24, although the Agency may review effluent limitations on existing point sources,[211] it is barred from making regulations on effluent limitations on new and existing point sources in the oil and gas sector.

Section 29 states: The Agency shall co-operate with other Government agencies for the removal of any pollutant excluding oil and gas related ones discharged into the Nigerian environment and shall enforce the application of best clean-up technology currently available and implementation of best management practices as appropriate.[212] Nigeria's sole environmental agency is thereby inexplicably prevented from participating in the cleanup of any pollution caused by the oil and gas industry.

Finally, section 30 prohibits Agency officers from entering and searching all oil and gas facilities even with a warrant issued by a Court.[213] This section further inhibits the Agency from enforcing any environmental regulations in the oil and gas sector. Instead of simply declaring that the oil and gas sector is outside of the Agency's purview, the NESREA Act gives the Agency the power to enforce environmental regulations in the oil and gas sector but robs it of the ability to actually do so.

The effects of these exemption provisions are that the supposed environmental regulator in Nigeria has no legal basis or power to investigate and punish

[210]*Ibid* section 7.
[211] *Ibid* section 24. The NESREA Act defines a point source as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduct, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged."
[212] Ibid.
[213] Ibid section 30.

environmental default in Nigeria's oil and gas sector. This has been a major barrier to victims of oil pollution in the Niger-Delta who are faced with the brazen reality that NESREA may not provide any haven after all. They are therefore left with one major option: to go to Court and seek redress. As we will discuss in what follows, technical and procedural requirements of establishing jurisdiction and locus standi have equally left litigants in Nigeria with serious if not more issues to ponder on.

4.2.1 Jurisdictional Issues in Environmental Crime in Nigeria.

It is trite that a Court will only deal with cases referred to it. In dealing with such cases the Court first assumes jurisdiction. Assumption of jurisdiction by the Court entails the fulfillment of certain requirements. These requirements are condition precedent or due process in the determination of a dispute. This is because where action is not initiated by due process of law, the proceedings before the Court is a nullity. [214] The Supreme Court held in Yahaya v. The State that once a mandatory provision of the law is not followed, the trial is rendered null and void ab initio.[215] Uwais, CJN held that the mandatory provisions must be complied with before the commencement of trial. It is the fulfillment of the law that gives jurisdiction to the Court to try the case before it.[216]

The pre-conditions for the exercise of jurisdiction on any case are: whether the plaintiff has a cause of action, which is valid and enforceable by law. In other words, the plaintiff must have sufficient interest and locus standi in the matter.[217] Again

---

[214] *Jika v. Akuson* (2006) ALL FWLR (pt.293) p. 276.

[215] (2002) 3 M.J.S.C 103.Suit No. SC 59/2001 Judgment delivered on February 1, 2002

[216] Where there is non-compliance by the plaintiff, the defendant may waive his right. In such instance, the Court can assume procedural jurisdiction.

[217] In oil spillage cases, the right to fishery in tidal water is recognized in law. In *ELF Nigeria limited v. Sillo & Anor* (1994)6 N.W.L.R (pt. 350) 258, the Supreme Court relying on *Adeshina v. Lemour* (1965) 1 All N.L.R. 233 held that the plaintiff has proved the existence of their common right of

where the suit is instituted in a representative capacity, there must be authorization[218] and the persons who are to be represented and those representing them should have same interest in the matter.[219] Where there is need for a Pre-action Notice, the plaintiff must serve such pre-action notice.[220] The Court held in Asogwa v. Chukwu[221] that where there is no issuance of pre-action notice as provided by the law, there is lacking a condition precedent, which could not give the Courts assumption of jurisdiction. In Teno Engineering Ltd v. Adisa the court held that service of Court process is a condition precedent to vesting jurisdiction in the Court.[222] Also in Okolo v. U.B.N[223] the Court held that payment of filing fees is a condition precedent to the Courts assumption of jurisdiction.

Where there is time limit for commencement of the action the victim must comply with the time limited for the commencement of action. The Court held in Akibu v. Azeez that in limitation of action, time begins to run from the date the cause of action arose.[224] Time for commencement of action is of essence to the successful institution of an action in court. In certain instances, the effect of the hazard does not

---

fishery in tidal waters and its violation and was therefore entitled to damages. See generally Theodore Okonkwo, The Law of Environmental Liability (Lagos: Afrique Environmental Development & Education,
2003), p.115. *locus standi* is the right of the party to appear and be heard on the question before the court- Per Bello, CJN in *Senator Adesanya v. President of Nigeria* (1981) 2 N.C.L.R 388; See also *Edjerode v. Ikine* [2002]2 M.J.S.C 163; *A-G Federation v. A-G of the 36 States* [2001] 6M J.S.C 69; *Arabambi v. A.B.I. Ltd* [2006]3 M.J.S.C 61; *Yesufu v. Governor Edo State* [2001] 5m.J.S.C 128.

[218] *Ndule v. Ibezim& Anor. Inre:Onyekwulunne* [2002] FWLR (pt 110)1951 @ 1964 SC.

[219] *Shell Petroleum Development Company Nigeria Limited v. Chief Otoko & Ors. (1990) 6 NWLR pt 159* 693; *Amos v. Shell B.P. Nigeria Limited (1974) 4 E.C.S.L.R 486*; *Ejem v. Offiah (2000) 7 NWLR (pt. 666)p. 662.*

[220] Federal Environmental Protection Agency Act s29 (2).

[221] (2003) 4 N.W.L.R (pt. 811) p.540 at p.552; *Mobil Producing (Nigeria) Unlimited v. LASEPA* (2002)2
M.J.S.C 69; *Eze v. Okechukwu* (200302 M.J.S.C. 188; *Abakaliki Local Government Council v. Abakaliki Rice Mills Owners Enterprises Nigeria* (1990) 6 N.W.L.R. (pt. 155) 182; *University of Ife v. Fawehinmi Construction Co. Ltd* (1991) 7 N.W.L.R (pt. 201) 26; *Nigeria Cement Co. Ltd v. Nigeria Railway Corporation & Anor* (1992) 1 N.W.L.R (Pt. 22) 747; *Amadi v. N.N.P.C* (2000) 10 N.W.L.R (Pt. 674) 6; *Nigerian Ports Plc V. Oseni* (2000) 8 N.W.L.R (Pt. 669) 410.

[222] [2005] 7 M.J.S.C 89; *A-G Adamawa State v. A-G Federation* [2006] I M.J.S.C 1 *Sken Consult v. Ukey* (1981) 1 S.C. 6; *A.I.E.V. Adebayo* [2003] 12 M.J.S.C 44.

[223] [2004] 2 M.J.S.C 69.

[224] (2003) 5 N.W.L.R. (Pt. 814) 643; *Aremo II v. Adekanye* [2004] 11 M.J.S.C 11

immediately become obvious. This happens in cases of oil spillage, where damage to the soil though apparent may not be fully understood. Such instance may raise the issue of when cause of action arose. In dealing with this, the Supreme Court in Aremo II v. Adekanye held that a fresh cause of action arises from time to time as often as the damage is caused.[225] In all these cases, the Supreme Court was faced with the determination of the importance of the rules of proceedings and the court emphatically stated as illustrated that the rules of court procedure must be followed.

Where the rules of procedure have been complied with, the court may begin its assignment with ascertaining whether it has authority to determine the case. A court is said to have jurisdiction to determine the case; when it has competence to deal with the case. In 7up v. Abiola[226] the Supreme Court held that ‘it is trite that in all matters before the court the fundamental one is the issue of jurisdiction which must first be determined before anything else otherwise all proceeding relating thereto will be a nullity and an exercise in futility.[227]

In Shell Petroleum Development Company (Nigeria) Ltd v. Abel Isaiah,[228] the Supreme Court sitting in its appellate authority was called upon to decide the following:

1. Whether the Court of Appeal’s decision that the High Court had jurisdiction is right.

2. Whether the decision that the defendant was negligent in not constructing an oil trap was right.

---

[225] SC 139/2000 (2004)17 (09 July 2004)

[226] [2001] 6 SC 73

[227] Jurisdiction of the Court-General Information. Available at <http://euopa:eu.int/comm./justicehome/ejn/jusrisdiction-courts-gen-en.htm> accessed 3rd October 2019.

[228] (2001) 5 S.C. Pt. 11 1.

3. Whether the decision that the oil spillage was in fact massive spillage of crude oil from the appellants pipeline.

4. Whether the damages confirmed by the Court is a proper estimate of the losses suffered by the plaintiffs/respondents.

5. Whether the Court was right in upholding the damages awarded based on the unchallenged expert evidence of the respondents.

6. Whether the court below was right in affirming that the case was properly litigated in a representative capacity and whether the case is challenged under the rule in Rylands v. Fletcher.[229]

The Supreme Court stated that the main issue in the case was whether the Court of Appeal was right in holding that the trial court had jurisdiction to try the case. In the reasoning of the Supreme Court, the question of whether the court has jurisdiction to try the case can be raised at any stage of the trial and it was important to consider the issue of jurisdiction first because if it succeeds, that decision will determine the appeal. The case arose from an appeal by the defendant/appellant who was dissatisfied with the decision of the court below. The facts of this case are that in July 1988, an old tree fell on the defendant/appellant's oil pipeline and indented it. The said indention hindered the free flow of crude oil through the said pipelines which ran across the plaintiff/respondents swamp land and surrounding farmlands. It became necessary to installing a new one. The defendant/appellant engaged the services of contractor to repair the dented pipeline. In the cause of the repairs, the defendant neglected to construct an oil trap (a device constructed in the soil for the purpose of trapping oil in the course of such repairs) so that crude oil freely spilled onto the

[229] 3 H. & C. 774, 159 Eng. Rep 737 (Ex. 1865).

plaintiff/respondent's swampland and polluted the surrounding farmlands, streams and fishponds. The plaintiff claimed from the defendant at the High Court sitting at Isiokpo, Rivers State the sum of N22 million for damages resulting from the defendant's negligent activities. The Trial Court awarded N22 million to the plaintiff for the damage and loss caused by the defendant's Oil exploration activities.

The defendant appealed unsuccessfully to the Court of Appeal. The defendant/appellant has now come to the Supreme Court contesting the decision of the Courts below. At the Supreme Court, the issue for determination was whether the State High Court has jurisdiction in claims pertaining to mines and minerals including oil fields etc by virtue of the Federal High Court (Amendment) Act[230] and section 230 (1) of the Constitution (Suspension and Modification) Decree No. 107 of 1993. The Supreme Court was therefore called to determine whether the facts of the case fell within the definition of matters connected with or pertaining to mines and minerals, including oil fields, oil mining, geological surveys and natural gas.

Countries have different rules of jurisdiction that determine the distribution of competence among the Courts. In Nigeria, jurisdiction is determined by law and the limit of the Court's authority. This authority may be extended or restricted by law. A limitation may be either to the kind and nature of actions and matter of which the particular Court has cognizance. In Edjerode v Ikine[231] the Supreme Court stated that jurisdiction of the court cannot lightly be taken away except by very clear words an intention validly made. A limitation of jurisdiction can come into force at any time with or without reservation of jurisdiction over pending cases. Where there is reservation, all those cases reserved stand to the extent of the reservation.[232]In

[230] Decree No. 60 of 1991.
[231] [2001]12 SC (part II) 94.
[232] *Bruner v. U.S 343, U.S.* 112; *Beale v. U.S* 182 f.2D 565 (1950).

Insurance Co. v. Richie[233] it was held that when a law-conferring jurisdiction is limited or repealed without any reservation of jurisdiction over pending cases, all pending cases fall with the law.

The power of the legislature to limit or oust jurisdiction of the Court in the exact degrees and character, it may seem proper, is not challenged. The Supreme Court in Edjerode v. Ikine[234] stated that the courts are precluded from questioning the capacity and power of the authorities in promulgating laws. However such instance of limitation or ouster of jurisdiction created problem in the Abel Isaiah's case. In that case, the argument of the counsel for the appellant was that by the provisions of section 7 (b), 7(3) and 7(5) of the Federal High Court (Amendment) Decree No. 60 of 1991, the jurisdiction of the State High Court has been ousted in claims pertaining to mines and minerals, including oil fields, oil mining, geological surveys and natural gas. The Supreme Court considered whether the construction and maintenance of an oil pipeline is part of mining operations. It referred to the Petroleum Act 1960 and the Oil Pipelines Act 1956 and found that the most important aspect of oil mining operation is the construction of oil pipeline.[235] The Court therefore concluded that the construction operation and maintenance of an oil pipeline by a holder of oil prospecting license is an act pertaining to mining operations. From the facts presented by the parties, the Court also stated that the oil spilled while the repairs were carried out. The installation of pipelines, producing, treating and transmitting of crude oil to the storage tanks which led to the accident arose from or was connected with or pertaining to mines, and mineral etc. so the claim falls within the exclusive jurisdiction of the Federal High Court. Learned Counsel for the respondents argued

---

[233] 5 Wall 541 pp. 115-117. Available at http://caselawlp.findlaw.com/Cgibin/getcase.pl?court=us&vol=12 accessed 3rd October 2019.
[234] *Supra* n. 40.
[235] *2001 5 SC (pt n1)1*

that the law ousting jurisdiction of the Court could not affect the claim before the Court because the cause of action arose before the law came into force. He submitted that the Supreme Court has stated severally[236] that the applicable law to an action is the law existing when the cause of action arose. The Supreme Court rose up to the challenge and held that while it was correct that the cause of action arose before the promulgation of the law; the trial was in progress when the law was made and as such the law could not operate retroactively to affect the outcome of the case. From that moment when the law was signed, the jurisdiction of the trial Court was ousted.

It is necessary therefore to identify when a law is said to come into force and the effect of an amendment. In that case, the laws conferring jurisdiction in oil-spill cases started with the Federal High Court Act[237] through the Federal High Court (Amendment) Decree No. 60 1991,[238] the Federal High Court (Amendment) Decree No. 16 1992[239] to the Constitution (Suspension & Modification) Decree No. 107, 1993[240] and section 251 (1) (n) of the 1999 Constitution. By virtue of the provisions of section 2 of the Interpretation Act[241] 'an act is passed when the president assents to the Bill for the Act.' An enactment of the National Assembly comes into force on the day the Act is passed. In Adewunmi v A-G. Ekiti State[242] the Supreme Court held that an amendment takes effect from the date of the original document sought to be amended. In Provost v. Edun[243] the Supreme Court held that it is a valid canon of statutory interpretation that an amendment takes effect from the commencement date of the original or amended statute. The Supreme Court found that the judgment of the

---

[236] *Adesina v. Kola* (1993) 6 N.W.L.R (Pt. 298) 182 at 185.
[237] Chapter 134 L.F.N 1990.
[238] Now Act which commenced 26 August, 1993; See the Federal High Court (Amendment) Decree No. 16 1992 and Statutory Instrument No. 9, 1993.
[239] Which commenced January 1, 1992.
[240] Which came into force on 17 November, 1993.
[241] Chapter 123 Laws of the Federation of Nigeria 2004.
[242] [2001] 2 M.J.S.C 1.
[243] [2004] 4 M.J.S.C 94.

High Court in the Abel Isaiah case was delivered on 11 March 1994 after the coming into force of the Decree No. 60 1991 and Decree 107 of 1993 and was caught by the provisions of the Decrees. Ogweugbu, J.S.C, stated that in determining jurisdiction in this case, it will be necessary to consider the provisions of the various enactments including the Constitution of the Federal Republic of Nigeria 1999 dealing with jurisdiction of the Federal High Court. He analyzed section 7 of the Federal High Court Act,[244] the principal Act that sets out the jurisdiction of the Court. By this the court has no jurisdiction in oil spillage cases. Decree No. 60 of 1991 amended the Act and inserted a new section 7 vesting such jurisdiction in the Court. The question here is, does the prevailing circumstances not entail giving jurisdiction to the High Courts too.

This is good judgment. If by virtue of section 2 of the Interpretation Act a law comes into force on the day it is made, then the law ousting jurisdiction of the Court had commenced before the judgment was delivered. As such from the date of delivery of the judgment, the Court lacked both the jurisdiction to continue with the case and capacity to deliver the judgment. By virtue of section 4 of the Interpretation Act,[245] the judgment was made under an amended law.[246] The decision of the Supreme Court is correct in law. The counsel for the plaintiffs was not sensitive enough to realize that the State High Court's jurisdiction had been ousted from August and November 1993. All he should have done was go to the Federal High Court. He committed serious blunder by continuing with the case in a Court that had no jurisdiction. With the amendment of the law, the exercise of authority by a Court

[244] Chapter 134 L.F.N. 1990.
[245] Chapter 123 Laws of the Federation of Nigeria 2004.
[246]See *Barry and 2 Ors v. Obi A. Eric and 3 Ors.* (1998) 8 N.W.L.R (Pt. 562) 404.

whose jurisdiction is ousted is moot. According to S.M.A. Belgore, J.S.C,[247] once jurisdiction of a Court is ousted, the Court assuming jurisdiction does so as an exercise either in moot or as an academic exercise but certainly in futility. In Adewunmi v. A.G. Ekiti State, the Supreme Court held that the Court is not given to make moot decisions or decide hypothetical cases, which have no bearing. It should be noted however, though the exercise of further authority by the Court is moot, the issues in controversy in the case are not moot. This is because there is still opportunity for the determination of the unresolved issues in the dispute since the case was not decided on the merits.[248] According to section 6 of the Interpretation Act, the repeal of an enactment shall not affect any right, privilege, obligation or liability accrued or incurred under the enactment. Usually in ouster of jurisdiction laws, the substance of these rights or obligations does not change. What changes is the Court which the rights or obligations can be enforced. Thus there exists not merely the speculative possibility of invocation of law in some future dispute but also the presence of an existing unresolved dispute.[249] The issues involved in oil spillage disputes are usually continuing and their consideration may not be defeated by short-term orders capable of repetition, yet evading review.

The decision of the Supreme Court in the Abel Isaiah's case may not be unconnected with the fact that the subject matter of the dispute revolved on federal law[250] and therefore by the provisions of section 251 (1) of the 1999 Constitution, a case that raises a Federal question ought to be filed in a Federal Court. The Court stated in the case that in establishing whether the construction and maintenance of an oil pipeline

---

[247] In *Abel Isaiah case*.

[248] Except cases that have become statute – barred.

[249] <http://caselaw.lp.findlaw.com/scrips/getcase.pl?narby=cse&court=us&vol=3938 in vol=175> accessed 4th October 2019.

[250] Petroleum Act Chapter 10 and Oil Pipe Lines Act 1956 Chapter 07 L.F.N 2004.

is part of mining operations, it is relevant to refer to the practice of the oil prospecting license holders during mining operations and these have been described in the Petroleum Act and Oil Pipe Lines Act. A.B. Wali, J.S.C said ‘from the pleadings and the relevant statutory laws cited and relied upon, the High Court lacked jurisdiction to entertain the case as it is a matter covered by the Petroleum Act 1960 and the Pipe Lines Act 1956.’ This decision is in line with what obtains in some countries. In the U.S, Federal Courts decide cases that involve the U.S government, the U.S Constitution or Federal Laws etc.

However, the query is – was such an amendment necessary at that point in time? Was it not proper that a procedure that will promote a review in view of the difficulties and sufferings already borne by the plaintiffs should have been put in place in relation to pending cases? If the case is started de novo as may be expected, aside the time wasted, the cost and pain on the plaintiffs, how do they carry on with the issue of proof? Proof of the alleged claims will be a very difficult task because oil spillage case is not just a mere civil wrong. It is a serious hazard that can lead to hunger, poverty, and disease epidemic and even death. With the weaker position of the plaintiffs, what is the possibility of de novo case at the Federal High Court? It appears that the Supreme Court judges also thought through these considerations especially where there was no denial as to the happening of the damage claimed.

However, the court can only perform its duty of interpreting the law and applying it to the case. The Supreme Court has done its interpretation and held that the High Court, which exercised original jurisdiction, had no jurisdiction to try the case by virtue of section 230 (1) of Constitution (Suspension Modification) Decree No. 107 of 1993 and section 251 (1) (n) of the 1999 Constitution. The case was within the exclusive jurisdiction of the Federal High Court. The law therefore is that such cases can only

be instituted in the Federal High Court. Since the decision in this case, every victim is now aware that they must go to the Federal High Court to seek remedy in oil pollution cases.

The problem of jurisdiction in oil pollution case also arose in Shell Petroleum Development Company of Nigeria Ltd v. Chief G.B.A Tiebo VII & Ors[251]. In that case, the Supreme Court had to determine whether the judgment of the Court of Appeal upholding jurisdiction of the high court was ultra vires. The Supreme Court referred to the Isaiah's case. It considered that the cause of action in the case accrued on 16th January 1987, the suit was commenced on 6th June 1988 and judgment was delivered on 27th February 1991 and held that on these various dates, the State High Court had jurisdiction over cases in oil spillage because the law applicable to an action is the law existing when the cause of action arose.[252]The court held that the provision of Decree 107 of 1993 and section 251 (1) (n) of the 1999 Constitution related only to cases arising after 30 December 1991. The Supreme Court also stated that it ventured into the Tiebo Case because the issue of jurisdiction was raised. This is to emphasize the importance of jurisdiction in the determination of cases.

4.2.2 Jurisdictional Issues In International Environmental Litigation: Lessons From Kiobel

On the international scene, the consciousness of environmental rights activist was awakened by the US Supreme Court decision in Kiobel v. Royal Dutch Petroleum.[253] In 2002, Esther Kiobel, a U.S. resident and the wife of deceased Dr. Barinem Kiobel, filed the lawsuit, along with others against Shell Corporation. Her lawsuit was filed

---

[251] [2005] 9 M.J.S.C 158.
[252] *Koya v. Adesina* (1993) 6 N.W.L.R (Pt. 298) 182 at 185.
[253] *Supra* n 6.

under the Alien Tort Statute (ATS), a 200-year-old law that has been interpreted by the Supreme Court to allow federal lawsuits for modern-day egregious international law violations. The Ogoni plaintiffs alleged that Shell planned, conspired, and facilitated the Nigerian government's extrajudicial executions, crimes against humanity, and torture against the Ogoni people. Shell argued that corporations cannot be sued under the ATS. In Kiobel the Second Circuit became the first court of appeals to substantively analyze whether the ATS imposes corporate liability.[254]

Amicus briefs in support of the litigants were filed on both sides. The U.S. government, Joseph Stiglitz, international law and legal history scholars, and human rights advocates (including the U.N. High Commissioner for Human Rights) wrote in favour of the Ogoni plaintiffs. Shell's position was supported by another group of international law scholars, several foreign governments, and a dozen of the world's largest multinational corporations.

Many of the defendants in ATS cases have been involved in extractive industries such as ExxonMobil in Indonesia, Occidental in Colombia, Talisman in Sudan, Shell in Nigeria, Unocal in Burma, and Rio Tinto in Papua New Guinea.[255]

Other ATS suits have alleged that Pfizer conducted medical experiments on Nigerian children without consent, and that Nestle used child labour to work cocoa plantations in the Ivory Coast.[256] Even al-Qaeda, has been sued under the ATS.[257] The cases illustrate the significant goal of ATS plaintiffs to expose human rights violations by trying them in the court of public opinion. Thus, when in 2010 Kiobel was dismissed

[254] 621 F.3d 111, 131–45 (2d Cir. 2010).
[255] Ibid.
[256] ibid
[257] *In re* Terrorist Attacks on September 11, 2001, 349 F. Supp. 2d 765, 784 n.16, 785 n.19, 826 (S.D.N.Y. 2005) (allowing ATS claims to proceed against al Qaeda and two alleged 'fronts' for that 'organization'). See also *Saleh v. Titan Corp.*, 580 F.3d 1 (D.C. Cir. 2009); Juli Schwartz, *Saleh v. Titan Corporation*: The Alien Tort Claims Act: More Bark Than Bite? Procedural Limitations and the Future of ATCA Litigation against Corporate Contractors, 37 *RUTGERS L.J.* 867 (2006); *see also Al Shimari v. CACI Premier Tech., Inc.,* 657 F. Supp. 2d 700 (E.D. Va. 2009).

against Shell, the divided Second Circuit panel made headlines, and the sweep of the ruling gained immediate attention.[258]It was the first appellate69[259] decision to hold that the ATS could not be used against corporations.[260]

The position taken by the majority appeared to gain steady ground in lower courts since the decision was issued in September 2010.[261] An Indiana district court,[262]

for example, dismissed an ATS claim against a corporation, solely on the persuasiveness of Kiobel.[263] One week later, the same court disposed of a similar case, this time on the merits rather than for want of jurisdiction.[264] Within the Second Circuit, one post-Kiobel dismissal did not even generate a written opinion.[265] The majority decision has a long reach: Kiobel does not merely stand for the principle that corporations cannot be sued on a tort theory of aiding and abetting. Rather, it finds that corporate entities cannot violate customary international law because they are not subject to it. The majority's discourse on subjects of international law indicates a narrower definition of the word 'violation'. A violation is not merely breaking a rule. Rather, a person or entity is only subject to a rule if he can reasonably expect sanctions for noncompliance.

---

[258]Bob Van Voris and Patricia Hurtado, *Nigeria Torture Case Decision Exempts Companies from U.S. Alien Tort Law* (Sep. 17, 2010), *available at* <http://www.bloomberg.com/news/2010-09-17/u-scorporations- aren-t-subject-to-alientort- law-appeals-court-rules.html.. Accessed 4th October, 2019.

[259] A district court in California reached this same conclusion one week before the *Kiobel* decision was filed. *See Doe v. Nestle, S.A.,* 748 F. Supp. 2d 1057, 1132–45 (C.D. Cal. 2010). (The practice of forced child labour in cocoa fields in Mali was not actionable because of defendant's corporate nature).

[260] *Kiobel v. Royal Dutch Petroleum Co.,* 621 F.3d 111, 151 note (2d Cir. 2010) (Leval, J, concurring)

[261] *E.g., Viera v. Eli Lilly & Co.,* No. 09-495, 2010 WL 3893791 (S.D. Ind. Sept. 30, 2010); *Mastafa v. Chevron Corp.,* 759 F. Supp. 2d 297 (S.D.N.Y. 2010); *Flomo v. Firestone Natural Rubber Co.,* 744 F. Supp.
2d 810 (S.D. Ind. 2010).

[262] *Viera v. Royal Dutch Petroleum Co. supra.*

[263] *Viera*, 2010 WL 3893791 at 2.

[264] *Flomo*, 744 F. Supp. 2d at 817.

[265]*Mastafa*, 759 F. Supp. 2d at 298–301 (noting that ATS claims were dismissed in open court).

The majority opinion is also an exercise in legal formalism in that it avoids and even admonishes policy considerations that might favour victims of corporate tort. For the majority, strict adherence to established principles of customary international law is an end in itself. There is no discussion of the evils addressed by the modern line of Alien Tort Statute jurisprudence.

Contrary to the majority opinion in Kiobel, the ATS does not require the court to look to international law to determine its jurisdiction over ATS claims against a particular class of defendant, such as corporations. The first step of statutory construction analysis is uncontroversial: the plain language of the statute does not exclude any defendant. Secondly, the legislative history indicates no Congressional intent to exclude corporate defendants, and the words would not have been understood to exclude such defendants at the time of its enactment. Finally, another federal statute does enumerate exclusions for foreign sovereigns from ATS claims. These well-settled exclusions should inform the more nebulous status of corporate defendants.[266]

The implications of the case for environmental justice go well beyond multinationals domiciled in countries other than the U.S. The Court sanctioned Shell's desire of not only having the claim against it dismissed but also to negate the statutory basis making it possible to use U.S. courts as a forum to adjudicate civil liability for gross human rights violations committed abroad - even when those violations are committed by U.S. nationals, and even if the Americans are natural persons. This is arguably a clear pervasion of justice that renders the application of the ATS discriminatory. It is hoped that if and when similar facts are presented in the future, the Court would be more cautious in its judgment by reversing itself of this dangerous

[266] Daniel Price, Corporate Liability for International Torts: Did the Second Circuit Misinterpret the Alien Torts Statute?, *Seton Hall Circuit Review,* Volume 8 Issue 1 (Fall 2011).

precedent. For now, Kiobel remains the law and arguably a license for multinationals to escape justice from the hands of dehumanized victims of oil exploration and environmental pollution.

4.3 The Attitude of Courts in Other Jurisdictions

Research has shown that the Courts in other jurisdiction appear more proactive on cases concerning the environment.

4.3.1 The Indian Practice

Since the United Nations conference on Human Environment held at Stockholm in June 1972; the Indian government reacted by laying down in amendment of Indian constitution the basic foundation for environmental legislation in the fundamental Objective and Directive Principles of State Policy and the citizens duty towards environmental protection. The Article 48A and 51A of the Constitution[267] enables the State not only to adopt a protective measure but also to take all suitable steps to improve an already polluted environment. Later, this position was given judicial notice and made a fundamental right in the case of M.C. Mehta v. Union of India,[268] which is said to have originated in the aftermath of Oleum gas leak from Shriram Food and Fertilisers Ltd. complex at Delhi. This gas leak occurred soon after the infamous Bhopal gas leak and created a lot of panic in Delhi. One person died in the incident and few were hospitalized. An action was instituted and the Supreme Court of India extended the frontiers of the right to life to include the right to live in a

---

[267] The Indian Constitution (as Amended in 1976)
[268](1987) SCR (1) 819 or (AIR 1988 SC 1115)

healthy and protected environment. Thus, every citizen in India deserves a protected environment, and it was a means else authorities will be held liable.

In Mehta v Union of India[269]. The India Supreme Court up held the right of a citizen to litigate issues relating to pollution of the Ganges River. The Court order was to the effect that the statutory provision which imposed duties on Municipal authorities and Boards must be enforced. This shows that the Court can ensure that the authorities or agencies on environment carry out their duties and that they can be sued whenever by a citizen. If Nigerian citizens are encouraged to sue NOSDRA and NESREA, probably prosecution of all environmental crimes to the Nigerian environmental will stem the tide of crime to the environment thus save lives.

In Rural Litigation & Entitlement Randra v State of Utta Pradesh[270] where the SC of India held in rejecting the Defendant's submission that the Act does not purport to oust jurisdiction of the Court and could not constitutionally oust the jurisdiction of the SC. In a case of Limestone mining which was affecting the quality of water and degrading forest land in Doon valley held rejecting the defence of the Defendant mining company that issues of location of industries was empowered by the Central Government under the EPA- by its section 3(1) 3(2)(v) that no Court has jurisdiction to adjudicate on it.

The researcher opines that the Nigerian Courts would have opted for ouster of the Courts jurisdiction because it is federally empowered to locate the industry there as in the ever applauding Niger Delta pollution issues.

[269] (1998)SC 115

[270] (1988) SC AIR 2187

The India ERA in section 16(2) and 17 provides for strict liability of directors / secretary of offending company.

It is noteworthy that India established a national Environment Appellate Authority Act in 1997 to hear appeals of rejection of citing industries which may harm the environment with a retired Judge of their Supreme Court as chairman. This is worth trying in Nigeria, NGOs in India do sue for protection of the environment as in Tarun Bharah Sangit Alwar v Union of India[271] where the NGO sued on illegal mining, interest of ecology especially on deforestation. The Court held in support and pronounced that protected area must be ensured so as to maintain protection of existing forests and a forestation

Criminal Liability in India

The India Water Act of 1988, establishes criminal penalties of fines and imprisonment just like ours in Nigeria. In Uttar Pradesh Pollution Control Board v Modi Distllery[272] the Indian Supreme Court stated thus:

> It would be a travesty of justice if the big business house of Messers Modi Industries Ltd is allowed to defeat the prosecution launched and avoid facing trial on a technical flaw which is not incurable for their alleged deliberate and willful breach of the provisions contained in section 25(1) and 26

Thus in UA Pollution Control Board v Mohan Meakins Ltd [273] the India SC revired this old case to ensure prosecution of the company that discharged noxious effluents into streams on the fact of the enormity of injury or public health, irreparable

---

[271] (1993) SUPP(3) SCC 115

[272] (1988) AIRSC 1128 Quoted in S Divan and Rosencrounz, Environmental Law and policy in India (New Delhi India ,Oxford University Press 2013)p.190

[273] (2000) 2 SCALE 532

impairment to aquatic organisms and deleteriousness it imposes to the life and health of animals. The Court further opined that there should be no casual prosecution of such offenders. In Haryana State Board v Jai Bharal Wollen Finishing Work[274]. The Court fined both the company and its manager. The Nigeria Courts should emulate this approach – A case started in 1982 and stopped for over 12 years.

4.3.2 The Australian Actions

Australia has increase criminal penalties and the scope of criminal offences in relation to the environment. Thus the new legislative/criminalisation structure tightened all regulatory aspects of the environment; standards were made easier to understand so as to enable determination of performance of companies and individuals and detect prosecutable non-compliance.

However, some problems are apparent in this shift. For example, in the Land & Environment Court of New South Wales (NSW), Brown v. EPA,[275] where there was a challenge to the policy of applying a prosecutable reality approach to the issue of pollution licenses by the NSW EPA. The case sought to raise questions about the application of this policy with respect to the setting of overall pollution standards. The applicant was unsuccessful in the Land and Environment Court of NSW at first instance. The parties have recently settled the matter and consequently it did not proceed on appeal. It is worthy to note that in Australia, the Environmental Offences and Penalties Act 1989 created a new broadly defined offences of "harm to the environment", in addition to increasing fines and imprisonment terms for all existing environmental offences under the NSW Acts relating to environmental protection.

---

[274] (1993) for LT 1,01

[275] (1992) 78 LGRA 119

The Act also introduced directors' liability provisions and extended criminal liability for some waste offences. Studies further revealed that in terms of statistics, the use of criminalization of environmental offences has recorded significant successes in Australia. In fact, the enactment of the above Act has given rise to the number of criminal prosecution in the country. The use of criminal sanctions has led to more convictions and decrease in the number of environmental degradation cases in Australi

4.3.3 The USA Experience

According to Bellamy, the United States of America (U.S.A) is said to be one of the leading countries in the world that applies criminal sanctions to environmental degradation leading to crimes. This is because of the increased political pressure and awareness that has resulted in vigorous prosecution of environmental offences in the USA. The American approach has been successful in deference. Polluters from polluting the USA environment without due regards to the concept of sustainable development. Studies show that the United States Department of Justice has achieved 95% (ninety-five percent) conviction rate for all environmental prosecutions.[276] Industries are heavily regulated,

---

[276]Aufhauser, D. (1990). Environmental Crimes, 1990 Annual Report, 1990 A.B.A. Statistics reported are from 1990. Retrieved

especially in pollution control,[277] when only monetary or majority fines are imposed for violations of pollution control laws became a mere 'cost of doing businesses, It is noteworthy that any Executives and Managers who violate the environmental law were added to the American regulatory scheme. This position is similar to the Australian law with respect to the doctrine of lifting the veil of incorporation as aptly demonstrated in the notorious Salmon v Salmon[278]. That means, a company director or shareholder would not be exempted from criminal sanctions, including the company itself. This expansiness demonstrated the government's seriousness on maintaining clean environment by imposing criminal sanctions against erring perpetrators. Furthermore, the U.S courts came up with an approach known as the "should have known" mensrea to environmental crimes. It provides that corporate officers are expected to effectively monitor and exercise control of their operations. The approach makes convictions against corporate officers less difficult than crimes requiring

---

from <http://scholarship.law.berkeley.edu/elq/vol14/iss1/4>. Accessed 6th October 2019

[277] Bellamy, J. M. (2002). Putting The Boss Behind Bars: Using Criminal Sanctions Against Executives Who Pollute-What China Could Learn From The United States. Retrieved from http://heinonline.org/HOL/LandingPage. Accessed 14th September 2018.

[278] [1946]IAC

specific knowledge. Studies reveal that in the USA sentences for environmental convictions in the past involved suspended sentences, probation, and community service.[279] However, presently, the prosecutorial zeal, combined with strict adherence to the federal sentencing guidelines have led to higher fines and sentencing.

To further buttress the “should have known” principle, the Supreme Court of the United States of America has indicated that there is generally a presumption of mensrea as held in United States v Balint [280] and Morissette v United States[281] where Jackson J stated at 250 that, ‘The contention that an injury can amount to a crime only when Inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil’. Thus, whether the polluter had no intention to pollute

---

[279]Kurki, L. (2000). Restorative and community justice in the United States. Retrieved from

<http://www.journals.uchicago.edu/doi/abs/10.1086/652201>. Accessed 7th October 2019

[280](1922) 258 US 250 at 251.

[281] (1952) 342 US 246

the environment or not, he will be held liable where in certain cases where this presumption is not present strict liability may be applicable. In Morissette v United States,[282] the Court stated that in 'public welfare offences' the accused 'if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities'.[283] The Court stated further that the criteria for delineating between crimes which require proof of mensrea and those which do not 'is neither settled nor static',[284] and held that mere omission from the provision under scrutiny of words indicating mensrea 'will not be construed as eliminating that element from the crime'.[285] In United States v Dotterweich,[286] while discussing on 'public welfare' offences, the Court said: 'such legislation dispenses with the conventional requirement for criminal conduct – awareness of some wrongdoing. In the interest of the larger good, it puts the burden of acting at hazard upon

[282] 342 US 246 (1952)

[283] At 256

[284] At 260

[285] At 263

[286] 320 US 277 (1943)

a person otherwise innocent but standing in responsible relation to a public danger'.[287] Subsequently, in Staples v United States,[288] the Supreme Court held that it has essentially … relied on the nature of the statute and the particular character of items regulated to determine whether congressional silence concerning the mental element of the offense should be interpreted as dispensing with conventional mensrea requirements.

Whilst canvasing on the issue, the court raised the suggestion that 'punishing a violation as a felony is simply incompatible with the theory of the public welfare offense. In this view, absence of a clear statement from Congress, that mensrea is not required, we should not apply the public welfare offense rationale to interpret any statute defining a felony offense as dispensing with mensrea.'

In the above case, it became obvious; the Court reaffirmed that knowledge or intent were not required to be proved in prosecutions under the Act. Both these cases held corporate officers strictly liable for crimes

[287] At 280-81

[288] 511 US 600 (1993).

committed by their corporations,[289] also, and primarily, corporations management are duty bound to implement measures that will ensure that violations will not occur'.[290]

Similar position was held in the case of United States v Weitzenhoff,[291] where the defendants were convicted for violating the Clean Water Act (CWA) which provides that any person who 'knowingly violates' certain sections of the Act 'or permit any condition or limitation implementing any such sections' is guilty of a felony.[292] The defendants were both sentenced to significant terms of imprisonment.[293] The defendants were managers of a sewage treatment plant in Hawaii and they had instructed employees to pump, under cover of darkness, 'waste activated sludge' directly into the ocean. This effluent did not comply with the standards with which the plant had to comply. They had

---

[289]S Zipperman 'The Park Doctrine – Application of strict criminal liability to corporate individuals for violation of environmental crimes' (10 UCLA J Environmental Law and Policy 1991) 123 at127-134

[290]Supra

[291] 1 F.3d 1523 (9th Cir 1993) amended on denial of rehearing and rehearing en banc 35 F.3d 1275 (9th Cir 1994) cert. Denied 115 S Ct 939, 1995

[292] s. 1319(c)(2)(A

[293]Weitzenhoff was sentenced to 21 months and his co-defendant Mariani to 33 months

instructed the employees who did the pumping not to say anything about the discharges, because if they all stuck together and did not reveal anything, 'they [couldn't] do anything to us'.[294]The Court of Appeals confirmed their convictions by holding that the word 'knowingly' in the relevant section of the CWA merely required that the defendants knew that they were discharging pollutants, not that they knew that the discharges violated the relevant permit.[295]

The USA Court also award damages that would act as deterrence to offenders as demonstrated in USA v Shell Off shore Inc & Shell Exploration and producing Co.[296]

In the USA v Shell BP (the Gulf of Mexico) case of the Court and the company of USD 20 billion for the spill.

Furthermore in the United States v Central Industries et al [297] In this case millions of pounds of slaughter house waste were converted marketable fat which generation of 500,000 gallons per day of processed water which was discharged into a tributary of the Pearl river and damaged the drinking water supply for the city of Jackson Mississipi within 4 months in mid 1995. That the company committed violations

---

[294]Weitzenhoffat 1282.

[295]Weitzenhoffat 1283.

[296] (2003) Civil Action No.CV 031458.2. Quoted in a Journal of Environment and Earth Science ISSN 2224-3216 Vol. 5 No. 18, 2015 by O V C Ikpeze, E Osaro and N G Ikpeze p. 150.

[297] (1995)cited in environment crime by Clifford and Terry D Edwards (USA Jones & Bertlet Learning (2012)p 279.

which was more than 1000 per unit exceeding the routine pollutant limitations. The company pleaded guilty in November 2000 to conspiracy to violate the CWA and 25 felony CWA violations. The company was ordered to pay $13 million criminal fine and $1 million in criminal restitution to the state.

Three high-ranking corporate officers and a board member and were ordered to pay between $25,000 = to $300,000 = This is really exemplary and deterrence focus. Now can Nigeria Courts be convinced on the way to explore and focus criminality against the environment? The answer is the Time is now. Instructively in United States v Elias[298]. An employer Elias ordered two of his employees to climb into a cyanide tank containing waste cyanide to clean it. Elias failed to provide information to the emergency officers and the employee suffered permanent brain damage. The Employer was jailed 17 years and to pay $6 m to the family. The question is who dares repeat such a hernous crime. The answer in the USA is no on. Nigeria must and her Courts or special Courts must know this line of the polluters of Nigeria environment to desist from committing environmental crime which waste lives.

4.3.4 Examination of the South African Practice:

With respect to South Africa, studies reveal that criminal sanctions for environmental crimes are now the order of the day.[299] This does not downplay the fact that victims of environmental crimes or offences, as it were cannot rely on other remedies for such an act. That is, when the environment has been harmed and degraded, civil and administrative remedies can be sought and used to make culprits accountable. On the legal front, one major legislation which was enacted to combat environmental harm

---

[298] Ibid p. 279 .

[299] J. Glazewski and E Witbooi, (2002). Environmental Law. Retrieved from <http://heinonline.org/HOL/LandingPage?handle>. Accessed 7th October 2019

and degradation is the National Environmental Management Act 107 of 1998 (NEMA). The above Act has recently been amended, and the amendment contains numerous provisions for imposing sanctions and civil liabilities on the directors, managers and officials of companies who pollute and harm the environment.[300] This position is in all fours with the provision of the Australian Environmental Offences and Penalties Act 1989, which lifts the veil of incorporation to find the directors and shareholders of polluting companies liable to sanctions. Another innovative provision in the above law is the fact that since section 28(14) is now listed as a Schedule 3 offence. This means that unless it can be shown that all reasonable steps necessary to prevent the crime were taken, even an unintentional (but negligent) unlawful act or omission which causes significant harm or degradation of the environment can make a director personally liable. The country (South Africa) has decided to employ criminal law as a weapon in fighting against environmental abuse and degradation and at large to preserve and protect the environment and public health. A method which from all indication has proven to be effective.

It is trite that environmental law and criminal sanctions are two distinct bodies of laws, however, in the South African case of State v Blue Platinum Ventures (Pty) Ltd,[301] the South African Court brought about integration of the two. It showed that criminal sanctions for environmental infraction can be imposed by a competent Court. In fact, according to Sachs, In South Africa, fines are usually imposed by the court and the administrative bodies whenever environmental crimes are committed; prison term is rarely imposed. This is because the monetary value or punishment outweighs

[300] K.O Odekuet al, Accentuating Criminal Sanctions for Environmental Degradation: Issues and Perspectives, Environmental Economics , Vol. 8, Issue 2, 2017, 28-37. doi:10.21511/ee.08(2).2017.03
[301]RN126/13

the imprisonment term. This punishment is provided for by the provision of section 28 of NEMA, which provides inter alia: if a person is found to have transgressed the provisions of the law, the person is liable to pay a fine of a million rand, alternatively the person could be sentenced to imprisonment for a year or given a combination of both. The same section empowers the authorities to criminally prosecute perpetrators of environmental harm.

For the sake of emphasis, it is pertinent that the researcher delve a bit in to the facts of the above case. The Blue Platinum Ventures case was about severe soil erosion that was caused by a newly formed company called Blue Platinum Ventures which was digging clay to mould bricks. The company was owned by Mr. Matome Samuel Maponya, who was the co-accused in the case. The court charged both the company and the owner for commencing with an activity under 1(e) of Listing Notice 2 of 2006 which states that: "the construction of facilities or infrastructure, including associated structures or infrastructure, for any process or activity which requires a permit or license in terms of legislation governing the generation or release of emissions, pollutions, effluent or waste which has not been identified in Listing notice 1 of 2006 without first obtaining the necessary environmental authorization as is obliged to do in terms of Section 24 of NEMA". The activity entailed the clearing of vegetation and excavation of large holes and pits, which caused large scale soil erosion and other serious harm to the surrounding environment including the health and safety of the neighboring village and its livestock. This activity led a concerned community member to approach the Police Station to lay charges against the company for the alleged contraventions of NEMA. The company was formerly charged in terms of NEMA, and subsequently, the owner of the company was also charged in terms of section 34 of NEMA in his personal capacity for failing to take all

reasonable steps that were necessary in the circumstances to prevent the damage caused by his company to the environment. Evidence was presented that had failed to provide the experts with all the documentation needed to process the applications needed to carry out the activities. Mr Maponya pleaded guilty to this charge in the Lenyenye Magistrates Court in Limpopo, South Africa. The accused entered into a plea deal wherein they pleaded guilty in terms of section 112 of the Criminal Procedure Act. The accused was sentenced to five years imprisonment which was wholly suspended for a period of five years based on the plea bargain on condition that the accused is not convicted again of contravening the provisions of section 24(F)(1) of NEMA during the period of suspension. Another condition that accompanied the sentence was that the accused rehabilitates all the areas which were damaged by his company's mining activities.

Wild life society of Southern African & Ors v Minister of Environmental Affairs & Tourism of the Republic of South Africa & Ors[302] the applicant sought an order against the respondents to enforce section39 of Decree No. 9 (Environmental Conservation) 1992to declare that the Environmental Conservation Act 73 of 1989 and the General policy in terms of the Act are applicable to the area in the former Transkei and that the policy and act are enforced. In terms of section 39(2) no person is allowed without permission from the relevant authorities to carry no infrastructural development activities which may harm the environment.

---

[302] (1996) (3) SA 1095 (T). Quoted in O.V.C. Ikpeze and E. Osaro and N.G. Ikpeze, 'Ananlysis of Energy Sources, Impact on Environment and Sustainable Development: Landmark cases in the USA, South Africa and Nigeria' (2015) (5) (18). *Journal of Environment and Earth Science*

It was noted that certain land use practices have developed along almost the entire Transkeian Coast which have been destructive of the ecology of the coast line. Therefore constitute real threats to environmental sensitivity of the whole area. The 1st Respondent admitted all the averments.

4.3.1 Trends of Case Law: Locus Standi, Pre-Action Notice and Limitation of Action.

Locus Standi / Representative Capacity

The issue of locus standi will not present a problem to a person whose property interests have been damaged in the course of and due to environmental pollution or natural resources depletion. Yet, such a person may very well decide not to sue for any number of reasons. If regulatory agencies are not then informed or where they fail to act there may well be irredeemable damage to the environment, or the offender may go unpunished and similar behaviour undeterred.

However, a group of citizens or environmental NGOs have a crucial role to play as monitors of environmental activities, public educators, motivators, and defenders of the environment and are highly organized to mount environmental litigation.[303] They may because of an inability to show a direct interest other than that of their special environmental consciousness and common interest in the environment with other citizens be faced with a barrier of standing to sue[304].

The trend of case law, especially in Nigeria is that in order to have standing to sue, the plaintiff must exhibit ‘sufficient interest’, that is ‘an interest which is peculiar to the plaintiff and not an interest which he shares in common with general members of

---

[303] See Linda M.A. and Scott P., Defending the Environment: - Civil Society Strategies to Enforce International Environmental Law, (Transnational Publisher Inc., New York, USA, 2004).

[304] Ibid at pp. 205-222.

the public.' The judicial attitude in Nigeria is that a plaintiff who sues for damages arising from an environmental abuse must show that he suffered damages.[305] In Shell Petroleum Development Company Nig. Ltd v Chief Otoko and Others,[306] the respondents who were plaintiffs at the Bori High Court in Rivers State claim the sum of N499, 855.00 as compensation payable to the defendants (appellants herein) for injurious affection to and deprivation of use of the Andoni Rivers and creeks as a result of the spillage of crude oil. The action was brought in a representative capacity. The Court of Appeal held that: (a) It is essential that the persons who are to be represented and the person(s) representing them should have the same interest in the cause of matter;

(b) Given common interest and a common grievance a representative suit would be in order if in addition to the relief sought it is in its nature beneficial to all whom the plaintiff proposes to represent. The Court rejected the purported representative action.

In Adediran and Anor v. Interland Transport Ltd,[307] the appellants as residents of the Ire-Akari Housing Estate, Isolo, inter alia brought an action for nuisance due to noise, vibrations, dust and obstruction of the roads in the estate. The Supreme Court dealt with the common law restrictions on the right of a private person to sue on a public nuisance. The Court held that in the light of section 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 joining him as a party.

The approach of the Supreme Court in the above case by abolishing the first problem of locus standi in Nigeria is commendable. But the second problem of the rule

[305] M.T. Ladan, 'Enforcement and compliance monitoring of environmental law and regulatory good practices in Nigeria,' Department of Public Law, Ahmadu Bello University, Zaria RESEARCH WORKING PAPER SERIES

[306] (1990)6 NWLR(pt. 159) 693.

[307] (1991) 9 NWLR (pt. 214) 155.

remaining is that the public or group cannot sue by representation and claim special damages for individuals when they do not suffer equally. In Amos v. S.P.D.C. Ltd,[308] the plaintiffs sued the defendants in a representative capacity claiming special and general damages. It was alleged that the 2nd defendants as contractors to the first, had in the course of oil mining operations built a large earth dam across the Plaintiffs' creek. As a result, farms were flooded and damaged; movement of canoes was hampered, and agriculture and commercial life was paralyzed. One of the issues was whether special damages could be claimed in a representative action, when the plaintiffs suffered unequal losses, or whether the plaintiffs as general public could claim for losses suffered by them individually. It was held, dismissing the claim:

1. That since the creek was a public waterway; its blocking was a public nuisance and no individual cold recover damages therefore unless he could prove special damage peculiar to him from the interference with a public right.

2. That since the interest and losses suffered by the plaintiffs were separate in character and not communal, they could not maintain an action for special representative capacity. In N.N.P.C. v. Sele,[309] the plaintiffs sued for massive spillage of crude oil from the defendant's pipeline, which polluted and ravaged economic trees and crops, fishing ponds, fishing contrivances, local gin distilleries, and fresh water wells over a very wide area. They claimed 20,000,000.00 as fair and adequate compensation for their losses. At the conclusion of the trial the trial court entered judgment for the respondents and awarded N15,329,350.00 as special damages and N3,000,000.00 as general damages. One of the points taken on appeal was that the trial court was wrong to grant leave to the respondents to sue in representative

[308] (1974) 4 ECSLR 48.
[309] (2004) ALL FWLR (pt. 223) 1859.

capacity. In his lead judgment Muntaka-Coomassie JCA referred to the following dictum of Olatawura JSC, in Adeniran v. Interland Transport Ltd[310]. While in this case it has been shown that they have common interest, the grievance of individuals is separated and distinct consequently a representative action taken as in this case must fail.

The appeal failed because, on the particular issue, it was held that the respondents did disclose common grounds and interest in the suit and there were no individual claims. This would reduce the valuable Court time devoted to proving all the material issues over and over in each individual action.

It has been argued against the problem posed by the above decision that "unlike the non-communal English society in which the rule as to public nuisance was developed, in Nigeria people live in communities, especially in the Niger-Delta region where the worst incidents of environmental pollution occur. So how they share the proceeds of special damages awarded, which is the true worry informing the dichotomy of who sues in respect of public nuisance, is not the business of anybody."[311] Consequently, if this matter ever went on further appeal, the decision of the Supreme Court would be interesting indeed.

More recently, Justice C.V. Nwokorie of the Federal High Court Benin City of Nigeria in Jonah Gbemre v. Shell PDC Ltd and Ors (2005)[312] granted leave to the applicant to institute these proceedings in a representative capacity for himself and for each and every member of the Iweherekan Community in Delta State of Nigeria, and

---

[310] (1991) 9 NWLR (pt 214)155

[311] W.A. Checey, Judgement and Remedies in Environmental Cases. A paper presented at the Judicial Training Workshop Organized by UNEP and NJI, Abuja, between March 28-30, 2006, at p.41a

[312](2005) Suit No. FHC/B/CS/53/05.

to apply for an order enforcing or securing the enforcement of their fundamental human rights to life and human dignity as provided by sections 33 (1) and 34(1) of the 1999 Constitution of Nigeria, and reinforced by Articles 4, 16 and 24 of the African Charter on Human an Peoples' Right.[313] The Court held that these constitutionally guaranteed rights inevitably include the rights to clean, poison and pollution-free healthy environment. The Judge further 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 are a violation of their fundamental rights. Furthermore, the judge ruled that the 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 E.I.A. Act and has contributed to a further violation of the said environmental rights. The judge's order restrained the respondents from further gas flaring and to take immediate steps to stop the further flaring of gas in the community. The Judge advised that the Attorney General should ensure the speedy amendment, after due consultation with the Federal Executive Council, the Associated Gas Re-Injection Act to be in line with Cap.4 of the Constitution on Fundamental Human Rights. But the Judge made no award of damages, costs or compensation whatsoever.

This remains a landmark judgment in the sense of application of fundamental human rights to an environmental case for the first time in Nigeria, consistent with the trend in other jurisdictions like India and South Africa.[314]

The trend in other jurisdictions can be seen in the following instances. In the USA for instance, individuals and groups have generally been able to meet the requirement if

---

[313] Cap. A9 Vol.1, LFN 2004.

[314] See Dean M., 'The Revolution in Indian Environmental Jurisprudence', Review Essay (2000) *Asia Pacific Journal of Environmental Law,* Vol.5, Issue 3, Kluwer law International at pp. 291-303.

they show an injury to their aesthetic, conservation or recreational interests.[315] 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 union, notably of companies concerned with chemical industries whose interest were to maintain the authorization, also had the right to be heard. Tribunal adminsratif deRouen, 8 June 1993, Association Union touristique des amis de la nature et autres,[316] 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. However without a showing of material harm, the association could not seek damages. Where injury is shown, it does not matter the plaintiffs are only a few among many similarly affected. See Kajing Tubfk & Other v. Ekran Biid & Others,[317] three individuals among a community of 10,000 are not deprived of standing or relief because of their limited number. In some jurisdictions, traditional property doctrines have served to expand standing. In Abdikadir Sheika Hassan and Others v Kenya Wildlife Service,[318] for example, the court permitted the plaintiff of his own behalf and on behalf of his community to bring suit to bar the agency from removing or dislocating 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 action.

---

[315] See, *Scrap v U.S.*, (1973) 669 U. S. 412
[316] R.J.E. 1994/1, p. 61.
[317] High Court, Kuala Lumpur (1996).
[318] High Court of Kenya, Case 2059/1996.

Cases that are characterized as involving infringements of basic rights also generally afford broad standing to affected persons. See Festo Balegele and 749 Other v. Dar es Salaam City Council[319] (allowing 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). Governments, too, must demonstrate that they have standing. In Gray Davis et al. v. U.S. EPA (9th Cir. July 17, 2003), the federal government argued that California lacked standing to challenge EPA 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. This the court held to be sufficiently concrete to give them standing.

Where numerous individuals are harmed, as is often the case with environmental damage, many jurisdictions allow class actions to be filed by one or more members of the group or class of persons who have suffered a similar injury or have a similar cause of action. The class action is essentially a procedural device to quickly and efficiently dispose of cases where there are a large number of aggrieved persons. It helps ensure consistency in judgments and awards of compensation, as well as prevents proliferation of separate and individual actions. Petitioners file on behalf of themselves and others of their class, representing the others and subsequently others are asked to join in. Often public notices are put out asking interested persons to join the case. To be maintainable, class actions usually must be permitted under the procedural rules of the country, as in the U.S. and in India. Class actions may also be permitted, even recommended by courts, as a means to enforce the constitutional right

---

[319] Civil Cause No. 90/1991, High Court Tanania

to a healthy environmental when the specific facts threaten to violate the rights of an undermined number of people. See Jose Cuesta Novoa and Miciades Ramirez Melo v. the Secretary of Public Health of Bogota.[320]

Environmental statutes and regulations allowing citizen suits, either against an administrator for failure to perform a required act or against a person who is allegedly in violation of an environmental regulation or standard, have served to enlarge the standing of citizens to seek redress through the courts. Broad laws have been drafted, for example, in New South Wales, Australia, to allow 'any person' to commence an action against any other person alleged to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order under the law.

Similar legislation has been adopted in India and the United States. Courts must decide how broadly to read the term 'any person.' In particular they must determine whether the individuals must have some interest adversely affected or whether the law was intended to open the doors to all persons taking an interest in the matter, acting as private prosecutors. In South Africa, courts have looked to a number of factors to determine whether a member of the public has locus standi to prevent the commission of an act prohibited by statute:

• Did the legislature prohibit doing the act in the interests of a particular class of persons or was the prohibition merely in the general public interest.

• In the former instance, any person belonging to the class of protected persons may interdict the act without proof of any special damage.

[320] (May 17, 1995), Const. Ct,. Clolomba; Minors Oposa, Sup. Ct. Philippines.

• For legislation of general interest, the applicant must prove that he or she suffered or will suffer special damage as a result of the doing of the act.

Applying these tests to the Environmental Conservation Act of 1989, a court in Durban found it to be in the general interest requiring proof of special harm, but allowed applicant to proceed on a nuisance claim if she could prove that the management and operation of the site in question constituted such nuisance.[321]

Some courts have called for reexamining traditional rules of standing in environmental matter involving the state, in order to adapt such rules to the changing needs of society. In Wildlife Society v. Minister of Environment,[322] the Court held that a group whose main aim is to promote environmental conservation should have standing to apply for an order to compel the state to comply with its statutory obligations to protect the environment. Should access to the courts be abused, the judiciary may impose appropriate orders of costs to discourage frivolous actions.

Cases filed by the Secretary General of the Bangladesh Environmental Lawyers Association similarly led the Supreme Court to hold that any person other than an officious intervener or a wayfarer without any interest in the cause may have sufficient interest in environmental matters to qualify as a person aggrieved, e.g Dr. Mohiuddin Farooque v. Bangladesh[323] represented by the Secretary Ministry of Irrigation, Water Resources and Flood Control and Others.

4.4 Pre-Action Notice And Limitation Of Action/Statute Bar.

[321] *Verstappen v. Port Edward Town Board & Others,* Case 4645/93 Durban & Coast Local Division (SouthAfrica).

[322] Transkei Supreme court 1996.

[323] (1996) 48 DLR, SC Bangladesh, 1996.

Another procedural issue in environmental cases is Pre-Action Notice. This was the issue in the recent case of Mobil Producing (Nig) Unlimited v. LASEPA, FEPA & ORS,[324] the Court of Appeal upheld the fatality of the failure on the part of the appellant to serve the statutory pre-action notice under Section 30(2) of the FEPA Act on the second respondent at the instance of one of the fourth set of defendants/respondents. On further appeal to the Supreme Court however, the apex court held inter-alia, that the service of a pre-action notice is at best a procedural requirement and not an issue of substantive law on which the right of the plaintiff depend. It held further that it is not an integral part of the process of initiating proceedings and that a party who has served a pre-action notice is not obliged to commence proceeding at all. The non-compliance does not therefore raise the question of jurisdiction which can be raised at any time which if resolved in favour of the defendant would render the entire proceedings a nullity. It does not abrogate the right of a plaintiff to approach the court or defeat its cause of action; it merely puts the jurisdiction of the court to hear a matter on hold pending compliance with the pre-condition. It is therefore a mere irregularity, which merely renders an action incompetent but does not totally affect the jurisdiction of the court. Consequently, the irregularity can be waived by a defendant who fails to raise it by motion or plead it in the statement of defence.

The major aim of the mandatory section 29(2) or 30(2) provisions of the FEPA Act is not necessarily to enable the Agency prepare its case, but rather to see whether the matter could be settled out of court. Hence, the requirement of pre-action notice is not inconsistent with provisions of the Constitution of Nigeria.[325]

---

[324] (2002) 18 NWLR (pt.798)p.1
[325] *Abakaliki Local Government Council v. Abakaliki Rice Mills Owners Enterprises of Nigeria.* (1990) 6

It is evident from the above that limitation of time is another issue that often rises in environmental cases in Nigeria. This is because pollution may be continuous or an isolated case, or periodic. The defence naturally tends to urge the Court to hold that time runs from when the pollution occurred. The issue of continuing wrong arose in Gulf Oil Co. Ltd v Oluba.[326] The Appellant commenced oil exploration on the Respondents' land in 1973 and continued until 1989. This injuriously affected swamps, channels and lakes resulting in loss of income from fishing and farming.

The Respondents commenced action some thirteen years later in 1989. The Appellant's took a preliminary objection praying that the action be dismissed in that it was statute-barred. In respect of actions founded on tort, the applicable Limitation Law (of Delta State) provided for six years of limitation from the date on which the cause of action accrued. The trial judge held that the cause of action was a continuing one and not statute-barred.

On appeal, the Court of Appeal called the trial judge's decision "outlandish" because the words he relied on in reaching his decision, that is, "unless the wrong or act is a continuing one," are not to be found in Section 4 of the Law. The Court of Appeal held that the cause of action accrued with the cessation of the Appellants act, which resulted in the damage. It held further that the trial judge was wrong to look at the statement of defence to see whether it admitted that the cause of action was a continuing one. There might admittedly have been some weakness in the pleading of the Respondents' case by their counsel in the Gulf v. Oluba case. But even so, there was sufficient ground for the Court of Appeal taking the opposite view, and not

---

NWLR (Pt. 155) 182; *Construction Company Limited v. Nigerian Railway Corporation & Anor*. (1992)INWLR (Pt. 220) 747: *Obeta & Anor v. Okpe* (1996) 9 NWLR (Pt. 473) 401.

[326] (2003) F.W.L.R (pt.145) 712.

abandoning such a vast quantity of land to permanent ecological ruin, when the appellant could have restored the land.

4.5 Burden of Proof and Remedies.

In order to enable the Courts to enforce environmental laws, the parties must prove their cases, as required by law. This is a common procedure in litigation and not unique to environmental law. What could be unique is if the particular environmental statute requires a particular burden or standard or proof in a particular matter. Meeting the requisite burden of proof in environmental cases have most times been difficult particularly in civil cases.

4.5.1 Proof in Civil Cases.

Apart from the statutory burden of proof laid down in the Evidence Act,[327] and under the Common Law, the burden of proof in civil cases is on the preponderance of evidence or the balance of probabilities.[328] And in most cases, the burden is on the plaintiff.[329] Usually the burden lies on him who desires the court to make any pronouncement in his favour as to any legal rights on the existence of facts to which he asserts.[330] Likewise the party who was brought upon some allegations made against him is duty bound to satisfy the court that those allegations are unfounded. The nature of the obligation on the parties will depend on the requirements of the substantive law upon which the action arises and the rules of evidence.

---

[327] EA 2011 s135-137, LFN 2004, Chapter E14

[328] See *Olujinle v. Adeagbo* (1988)2 N.W.L.R (pt.75) 386.

[329] See section 135, 136 and 137 of the Evidence Act. See *NNPC v. Lutin Inv. Ltd* [2006] 2 M.J.S.C 1; *Onyenge & Ors v. Ebere & Ors* [2004] 11 M.J.S.C 184; *Ojo v. Philips* (1993) 5N.W.L.R. (Pt/ 296) 751; *Jalico Ltd v. Owoniboys* [1995] 4 S.C.N.J. 256; *Nsirim v. Nsirim* [2002] 3 M.J.S.C 26; *Ewo v. Ani* [2004] 4 M.J.S.C

[330] See *Adams v. L.S.D.P.C.* [2002] 5N.W.L.R (Pt. 656) 291 See also *Bon Ltd v. Babatunde* (2002) 3 N.W.L.R. (Pt. 706) 20.

Environmental pollution cases are civil cases in which the parties are expected to make proofs on the preponderance of evidence or balance of probabilities.

Generally in environmental litigation, the following proofs are necessary: - where the claim is damaged to property, the plaintiff must prove ownership of the property damaged.[331] In a claim for loss or destruction of farm crops, farm land and economic trees, the court held in Uhunmwangbo v. Uhunmwangbo[332] that the plaintiff must adduce sufficient evidence to show inter alia: the name, nature, and number of economic trees allegedly destroyed. For an action in negligence or nuisance, the ingredients of the offence must be established.[333] For a claim in special damages, the claims must be itemized and specially proved. In R.C.C. (Nig) Ltd v. Edonwonyi the court held that a claim of loss of earning is a claim in special damages in the sense that full particulars must be given.[334] Such facts as rate of earning and other facts that will enable the court to determine the claim in arithmetical calculation should be pleaded. In a claim of highly technical and professional nature[335] which the court would not ordinarily appreciate, the plaintiff needs to go extra mile to establish his claim through expert evidence.[336] In A.R.C v. J.D.P[337] the court stated that a counsel presenting a case is expected to argue his client's case convincingly and assist the court to arrive at the right decision.

The difficulty encountered by victims of environmental pollution in the issue of remedy lies on the problem of claim and proof. This problem arose in at the Supreme

---

[331] *Sommer & Ors v. Federal Housing Authority* (1992) 1 N.W.L.R (Pt.219) 548.

[332] (1992) 2 N.W.L.R (Pt. 226) 709.

[333] See Anya v. Concorde Hotel [2003] 2 MJSC 160; Royal Ade v. National Oil [2004] 9 M.J.S.C 40 Adediran & Anor v. Interland & Transport Ltd (1986) 2 N.W.L.R (Pt. 20) 78

[334] (2003) 4 N.W.L.R (Pt. 811) 513; Arabambi v. A.B.I. Ltd [2006] 3 M.J.S.C 61; Gonzee v. N.E.R.D.C [2005] 12 M.J.S.C 179; Daniel Holdings v. U.B.A Plc [2005] 11 M.J.S.C 69; Reynolds v. RockOnoh [2005] 10 M.J.S.C 159; SPDC (Nig) Ltd v. Chief G.B.A Tiebo VII & Ors. [2005]9 M.J.S.C 158; Nwanji v. Coastal Services [2004] 10 M.J.S.C 154.

[335] Claims involving determination of substances, extent of damage, etc.

[336] *Serismograph Services (Nigeria) Ltd v. Kwarbe Ogbeni* Supra.

[337] [2003] 5 M.J.S.C 57.

Court in the case of Shell Petroleum Development Company of Nigeria Ltd v. Chief G.B.A. Tiebo VII & Ors. In this case, the plaintiffs commenced action at the Yenagoa High Court claiming the sum of N64,146,000.00 as special and general damages arising from the defendant's negligence.[338] This was a result of crude oil spill on the lands, creeks, lakes and shrines of the plaintiff from the defendant's oil mining activities. The plaintiffs claimed specific sums as special damages for losses arising from pollution of fishponds, damages to communal fishing nets and raffia palms. They also claimed specific sums as general damages. The trial court awarded damages of N400,000.00 and N600,000.00 as general damage for loss of raffia palms and loss of drinking water respectively; N5 million as general damages and N1 million as costs to the plaintiffs. The defendants appeal to the Court of Appeal was dismissed. The appellant further appealed to the Supreme Court. The problems canvassed before the Supreme Court were: whether it was proper for the court below to award special damages when there was no sufficient proof? Whether the amount awarded as general damages and cost was too high and unnecessary?

In dealing with this challenge, the Supreme Court held that 'anyone making a claim in special damages must prove strictly that he did suffer such special damages claimed. According to Tobi, J.S.C., 'proof of special damages is strict. Where plaintiff is unable to prove special damages, his case crumbles and a trial court cannot compensate him by way of general damages.' According to Oguntade, J.S.C, the plaintiffs in their claim pleaded the nature of the damage in paragraphs 9-14. In paragraph 17, they set out the particulars of special damages claimed and in paragraphs 31 they expressed their claims. He stated that the rule in special damages

[338] Supra.

requires the claimant to establish his entitlement by credible evidence of such character, as would suggest that he is entitled to an award under that head. In some cases it may be unnecessary. The important thing is that the evidence proffered must be qualitative and credible and as such lend itself to quantification. However general damages need not be proved strictly as they are regarded as damages resulting from defendant's tortuous conduct. This is good law because where there is no strict proof of special damages there exists the tendency for a judge to make estimations. In this case, the plaintiff could not strictly prove the loss to the raffia palms a cost of purchasing alternative drinking water and water used for domestic purposes yet the court below awarded N400,000.00 and N600,000.00 damages respectively for these.

According to Edozie J.S.C. the requirement of strict proof definitely excludes a situation where the court will be left in a situation where it will start to guess what the losses due to the plaintiff should be. The making of estimation should therefore not be allowed. This is exactly what happened in this case. The trial court awarded special damages without proof. He said the general damage was in lieu of a claim for special damages. This is incorrect because there was claim for special damages. The problem was that the plaintiff could not establish sufficient proof for the claims. The Supreme Court did not hesitate to condemn such attitude and practice. The court distinguished between special and general damages[339] and held that since the plaintiffs failed to prove their entitlement to the special damages, the trial court erred in awarding general damages in place of special damages. The trial court was wrong to treat a claim, which failed under special damages as successful under general damages. The

[339] Storms Bruks Aktie Bolag v. Hitchinson (1905) A.C. 515; In the Sesquehuanna (1926) A.C. 655 at 661; Prehin v. Royal Bank of Liverpool (1870) L.R. 5 Ex. 92.

trial court even claimed that the award of general damages was a way of compensating the plaintiffs for the loss of expected profits and freight of goods, which according to the court was proved, but not on the writ. This cannot be justified. According to Tobi, J.S.C, the issue whether a court can award general damages in place of special damages does not exist.

For the award in general damages, the Supreme Court stated that the courts are at discretion in the award of general damages. Such award will depend on assessment based on certain considerations. It is only when they are manifestly too excessive or too low that the court will interfere. In this case there was evidence of excessive damage to crops, farms, farmlands, ponds, creeks and widespread environmental pollution so the court did not interfere with the award of N5 million.

This is good judgment because environmental pollution cases are not mere civil cases and with the extent of damage, inadequate remedial attention may render the farmlands etc infertile for a long time therefore the award of N5 million is not excessive neither is the N1 million costs too high. This is because of the cost of getting such a case from the High Court through the Supreme Court.

In such problems of proof, where victims make wrong claims and cannot substantiate their claims with adequate proofs, the Supreme Court strives to give adequate remedy e.g. in the Tiebo case, the court did not interfere with the award of N5 million as general damages. However the Supreme Court understands the predicament of the victims but regrets that victims who have good cases but do not satisfy the stipulations under the law and rules of proceedings have themselves to blame. As Tobi, J.S.C stated ‘general damages cannot be a compensation for special damages. In its strived to ensure that justice is done, the Supreme Court in some cases infers

negligence from the facts before it and dispense with the requirement of proof. In Machine Umudje v. Shell[340] the Supreme Court stated that it could draw necessary inference of negligence and it did just that. In such cases, the Supreme Court also applied the rule in Rylands v. Fletcher to hold the defendant strictly liable without proof. This helps lighten the task of the victims. This presumption enables justice to be done. The Supreme Court has also applied the presumption of res ipsa loquitur to assist victims. This presumption enables justice to be done when the facts beaming on causation and the care exercised by the defendant are at the outset legally unknown to the plaintiff and are or ought to be within the knowledge of the defendant. In Royal Ade v. National Oil,[341] Ejiwunmi, J.S.C held that the presumption of res ipsa loquitur is used to fasten liability on the defendant. Such presumption will aid victims of environmental pollution, who because of their limited knowledge cannot prove negligence.

However the grant of remedy may likely be affected by the attitude of the court and the limited number of courts that can exercise jurisdiction to grant remedy in environmental litigation. In Allar Irou v. Shell B.P Development Company (Nigeria) Limited[342] the court denying the injunction stated that ‘to grant the injunction would amount to asking the defendant to stop operating in the area… and cause the stoppage of a trade… mineral which is the main source of the country’s revenue’. Such consideration is not in the interest of the facts of the case presented to the court. The plaintiff should at least receive some remedy for the harm caused to him. It is believed that such attitude from the court is not likely to arise in this present time.

[340] (1975) 9-11 S.C. 155.
[341] *Supra* at p. 43.
[342] Suit No. W/89/71 Warri High Court 26/11/73 (Unreported); see M.A. Ajomo, ‘An Examination of Federal Environmental Laws in Nigeria’ in M.A. Ajomo & O. Adewale Eds: *Environmental Law and Sustainable Development in Nigeria* (Lagos: N.I.A.L.S & the British Council 1994), p.22.

Also with the exclusive jurisdiction of the Federal High Court in oil pollution cases in Nigeria. Will the number of Courts available not affect the chances of victims obtaining remedy? Can the Federal High Courts cope with the volume of litigation arising from petroleum operations?[343] Will this not cause an increase in sabotage incidents and related acts of hostage taking? For example, it appears unlikely that the plaintiff's in Abel Isaiah's case will start all over in the Federal High Court neither does it appear that all of them will accept the decision.

As discussed in this chapter, a number of technical and substantive issues continue to create barriers to environmental justice in Nigeria. If these technicalities are to be ameliorated, the Nigerian judiciary could play a broader role; specifically in applying the law with more flexibility and in fostering for creative judicial reasoning. It has been demonstrated that peculiar facts of the country's culture and law make it imperative for the judiciary to take an activist, critical and creative stance as the last hope for the common man and woman particularly in environmental matters. Due to ongoing corruption, neglect and the evident failure of the political class in implementing sustainable environmental policies, the Nigerian judiciary is often looked upon, and rightly so, to prompt and foster effective environmental management, as well as to emphasize the importance of public participation in environmental conservation and management in Nigeria.[344]

---

[343] See J.F. Fedumo: *Oil Pollution and the Problems of Compensation in Nigeria* (Port-Harcourt: F & F Publishers 2001), p.21

[344] Ladan M.T., *Enhancing Access to Justice on Environmental Matters: - Public Participation in Decision-making and Access to information.* A paper presented at a Judicial training workshop on Environmental Law in Nigeria. Organized by the National Judicial Institute, Abuja and UNEP. Held at Rockview Hotel, Abuja, Between 6-10 Feb-May 2006.

There is a lot of merit in the public interest litigation device and an attitude of judicial activism by the judiciary in environmental matters, not only because administrative and legislative review of administrative action is weak and judicial review dependant on the accident of litigation, but also because of the grave consequences of delinquent environmental management in the socio-economic life of a developing nation such as Nigeria. No doubt these concepts will have to emphasized consistently and aggressively in the courts, to prompt the desired change in the Nigerian legal and socio-cultural landscape. Nigerian courts may be guided by Principle 10 of the Rio Declaration on Environment and Development, June 1992, which admonishes that:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information on the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings; including redress and remedy shall be provided.

Environmental justice may only be realistically achieved in Nigeria when there is ample opportunity for victims of environmental problems to obtain redress in law courts. When victims are unable to obtain redress either due to technical or substantive barriers, it breeds apathy on the part of the people in the area of environmental litigation, and this is never a good situation for a nation to find itself.

In order to awaken belief in the judicial systems as arbiters of redress and justice, the Nigerian judiciary must take more proactive roles, which involves widening locus standi requirements, not allowing technicalities to stand in the way of substantive

environmental issues and also preventing gold digging applications that stand on the path of serious environmental cases.

The recent failed attempt at outsourcing environmental claim in Kiobel may be an important reminder and a lesson that for the solution to environmental problems, it is best to look inwards in the search for environmental justice. Thus, the Nigerian judiciary must begin to play a more proactive role in breaking the barriers to environmental justice, and in removing technical obstacles that prevent victim from obtaining redress.[345]

4.6 Lesson For Nigeria on Environmental Criminal Application

There have been certain unresolved issues when it comes to Nigerian environmental protection. One of these is the lack of ministerial coordination and cooperation. Causes of this discord include poor communication among departments, a surprising lack of knowledge of the general legislation covering the environment, as well as the lack of clarity about the roles of the federal and state ministries and the state environmental laws and regulations. Another one of these issues is the numerous overlapping functions and responsibilities for environmental protection, monitoring and enforcement The relationship between

[345] Mmadu R.A. Judicial attitude to environmental litigation anaccess to environment justice in Nigeria; lessons from KIOBEL 2(1) Afe Babalola University Journal of Sustainable Development law and policy Vol. 2 Iss.1 (2013). 149- 170

all the Federal and State ministries and agencies and the Local Government is also discontinuous and inconsistent. The problem appears to be mainly between the centralized federal functions and those at state level, with rivalries and jealousies, resulting in top-down legislation having limited perceived applicability or relevance at State and Local level. There is also the issue of weak institutional capacity and lack of funding. The regulatory agencies tasked with enforcing environmental laws are often poorly funded and lack the requisite financial provision to carry out their enforcement procedures. Apart from this, there is the long standing issue of bad governance. Endemic corruption, greed and graft characterize the people in government and as a result, there are many weaknesses in the enforcement of environmental laws in Nigeria. Issues ranging from misappropriation of funds by government officials, to bribery, are part of the reasons why the environment is in the deplorable state that it is in today, and environmental protection and sustainable development is often ignored. There is also the problem of lack of public participation. The public often refuses to become environmentally

conscious and as a result, they ignore the effects that their activities have on the environment.[346]

First and foremost, in order to ensure more effective enforcement of environmental laws in Nigeria, there must be improved environmental law awareness. Awareness should be made all around the country, in every state and local government areas about the dangers and the effects of the pollution of the environment. The Government should educate people on the importance of keeping a sane environment and the positive effects on the development of the Nigerian economy. Advertisements should be made via the media to inform people all over the country of the environmental problems prevalent in the country and the ways to mitigate most of the problems. Individuals and communities should also be encouraged to participate in environmental improvements efforts. Acceptable standards of operation and compliance should be established and published online for the interest of the public and for easy access. Also, effective environmental monitoring should be ensured. Environmental monitoring instruments should be made

---

[346] O C Eneh, Managing Nigeria's Environment: The Unresolved Issues. Journal of Environmental Science and Technology, 2011 4: 250-263 <http://scialert.net/fulltext/?doi=jest.2011.250.263> accessed 12th October 2019

available for effective enforcement as this will enhance the collection, analysis and distribution of relevant data to environmental impact assessment, policy analysis and environmental monitoring units within the States and Local Governments.

Moreover, more funds should be allocated by the Government at all levels to enhance the execution of projects geared towards the improvement of the environment. Local Governments are devoid of the requisite human and material resources to undertake environmental management. These bye laws from the local government are neither well articulated nor program instruments designed to protect the environment but this deficiency can be mitigated by increased funding and provision of more skilled personnel to undertake environmental management schemes. There should also be stiffer punishments for environmental offences. The attitude of the court and the liabilities of those that violate environmental laws are also important in the enforcement of environmental laws. The attitude of courts in their various judgments towards environmental justice should be positive. Just orders should be made to remedy the damages done to the physical environment of private individuals who seek redress in the law court. This would enhance enforcement of the set rules and regulations due to the fact that people would be subjected to obey the regulations and guidelines of environmental laws as a result of the harsh penalties for those found guilty of environmental offences. It is also recommended that the government establish Environmental Courts. Just like there are National Industrial Courts in the country, environmental courts that would entertain environmental matters should be established for better enforcement of environmental laws in the country. This would

ensure quick response to the needs of the environment, popularize environmental laws and aid enforcement of those laws. There should also be quick and timely response to environmental emergencies. Normally, an environmental emergency would be left unattended for considerable amounts of time before it is responded to or resolved, and in such circumstances, the complaints of those suffering from the effects f these emergencies are often ignored, and the causers of these emergencies, who are also the violators of the law, often go scot free, without answering for their actions. This should not e so as the regulatory agencies should ensure that any environmental emergency, be it am oil spill, indiscriminate dumping of refuse, harmful carbon emission, improper treatment and disposal of hazardous waste, or any environmental vice, is treated with the utmost efficiency and urgency. I also recommend that the State Government should ensure the preparation of periodic reports on the state of the environment in each State or community for submission to the Ministry of Environment. This will enhance the enforcement methodologies and new strategies are initiated for effective monitoring and management of the environment. The state of the environment needs to be consistently monitored for sustainable development to be guaranteed. In addition, the environmental laws should be amended and be made more comprehensible and unambiguous. The various lacunas and inaccuracies in the law cause problems in terms of interpretation and enforcement as laws which are similar to each other or apply to the same object often overlap or contradict each other, and this will cause problems when the court wishes to apply these laws as it may not know which law to adhere to the legislature should come together and carry out a complete overhaul of the country's environmental law so as to ensure clarity, and conciseness on all sides. Finally, there should be effective access to justice. A legal aid scheme should be provided for those victims that cannot

afford the high cost of litigation. The citizens should have equal and effective access to justice.[347]

4.7 Need to Lift the Veil of Incorporation to Environmental Crime in Nigeria

Generally, when a company is incorporated in Nigeria, whether such company is Nigerian owned, foreign owned; or owned by both parties, as it were. The company takes up the role or status of a corporate personality, as such can sue and be sued on its own name; including the power to own its own properties and common seal etc.[348] This significance of incorporation of a company Is provided for in section 37 of the Companies and Allied Matters Act (CAMA), 2004, which provides thus:

> As form the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising the powers and functions of an incorporated company including the power to hold land, and having perpetual succession and common seal, but with such liability on the part of the members to contribute in the event of its been wound up as mentioned in this Decree.

---

[347] H Ijaiya and T. O. Joseph; Rethinking Environmental Law Enforcement in Nigeria; 2014; Beijing Law Review . <http://www.scirp.org/journal/blr> accessed 12th October, 2019

[348] CAMA s37

The implication of the above section of the law is that upon incorporation, the company as shown on the certificate of incorporation:

1. Becomes vested with the right to own their common seal- for the sake of executing documents involving the company.
2. Members become liable to the amount of the unpaid shareholding during winding up.[349]
3. Has the power to own lands and other properties (movable or immovable) in its corporate name. This of course implies the company's power to sell such properties at will.
4. Like any other natural person has all the powers, rights and functions accorded to other adults.
5. The members become a corporate body, identified by the name stated in their certificate of incorporation, memorandum of association, article of association and other corporate documents.
6. Enjoys the status of separate personality from the date stated in its certificate of incorporation; with the power to sue, be sued and enter into legal relations in its corporate name.[350]

Most important of these features of incorporation is the status of a separate corporate personality. This status/rule of corporate separate personality was

---

[349] This does not apply to unlimited companies.

[350] N.C.S. Ogbuanya, *Essentials of Corporate Law Practice in Nigeria (*2nd edn, Lagos: Novena Publishers Ltd, 2014) 192

established by the celebrated case of Salomon v. Salomon & co. Ltd,[351] where Aaron Salomon, a sole proprietor dealing on boot and shoes around East London for over 30 years transformed his business into a limited liability company and sold his earlier business to the newly formed company. In forming the company, Aaron Salomon issued shares to himself and about 6 other members of his family, who held one share each. A year later, the company fell into some mischief- debts from some of the debentures holders, which Salomon was amongst them, but had secured his debenture with the company assets as a safety precaution. The liquidators sold the company assets, ignoring Salomon's fixed charges, claiming that the company is one and the same as Salomon himself. The trial Court and the Court of Appeal held the same position, but on further appeal to the House of Lords, the court established the above principle that a company once incorporated becomes a separate legal personality from its members. The court went further to state that it does not matter that the same persons that formed the company are the same persons managing the latter; thus the company can contract with its shareholders.

---

[351](1897) AC 22

The significance of the above judgment is that a company being a different person in law is neither the agent nor trustees of their members. This principle was reiterated in the Nigerian case of Habib Nig. Bank Ltd v. Ochete,[352] where the Court of Appeal per Umoren JCA restated the law that from the instant a company is incorporated, it takes up the status of a separate person in law different from its shareholders. It thus puts up a corporate veil beyond which no one can penetrate, save when such veil is lifted in a manner allowed by law. This means that the position of the law is to the effect that no shareholder or director as the case may be, in a company can be held liable for acts done by them in the name of the company as nerve centres or alter ego of the company. This is because of the corporate veil covering all their faces. This point was explained by Aderemi, JCA (as he then was), in Companhia Brasileira De Infrastrututira v Cobec (Nig) Ltd,[353] thus:

"The single most important consequence of incorporation of company is the separate legal personality which the company acquires. From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in memorandum capable forthwith of exercising all the functions of an incorporated company;

---

[352] (2001) 3 NWLR (pt. 699) CA 114

[353](2004) 13 NWLR (Pt 890) 376 at 394 -395

that is the purport of Section 37 of CAMA. It is by the provision of this section that a separate legal entity of the body corporate is created. Each company so registered or incorporated under CAMA is quite distinct and separate from each other; the locus classicus is the well-known case of Salomon Vs Salomon and Company Ltd (1897) AC 22. Upon incorporation, a company is regarded as a separate and distinct entity from any one of its shareholders, no matter how many shares he may hold..."

The frontiers of this principle was principle was extended to include subsidiaries and associate companies in the 1990 English case of Adams v Cape Industries plc,[354] where the Court of Appeal dismissed the contention that a corporate veil should be pierced merely because a group of companies operated as a single economic entity in terms of business reality. However, the court went further to aptly highlight that where such veil is lifted, the individuals behind the veil (members and directors), or in the instant case, the subsidiaries or associate companies can be held liable for acts, omissions or crimes committed by said parties through the instrumentality of the separate legal personality shield. In the instant case, Cape Industries, a company registered in England, was engaged in mining asbestos in South Africa. The company's products were marketed in the United States of America through a complicated network of subsidiaries and associated companies. In a series of class actions a number of

---

[354] (1990) Ch 433

factory workers who had contracted disease after inhaling asbestos dust managed to secured judgment in an American court against Cape (the holding company presiding over the corporate group). The problem that ensued was the enforcement of the judgment in English Court. The researcher wishes to point out that by implication, the case highlights that the only true rationale for "veil piercing" is if a company is set up for fraudulent purposes, or where it is established to avoid an existing obligation etc.

Having laid the foundation above, the researcher wishes to point out that the doctrine of lifting the veil is an exception to the general rule of separate personality as laid down by the English case of Salomon v. Salomon,[355]section 37 of CAMA and other subsequent as held in cases of Lee v. Lee Air Farming Ltd[356] , Attorney General v. Amalgamated Press of Nig.[357] and Daniel v. Insight Engineering Co. Ltd [358]Many a day, company officials take advantage of the corporate veil,

---

[355](1897) AC 22

[356] [1961] AC 12

[357] [1956-57] 1ERLR 12

[358] (2002) 10 NWLR (pt. 775) 231 at 248

commit crimes and blame it on the company that they were acting in the stead of the company. Such as:

1. Perpetuate fraud
2. Defeat the aim of law
3. Carry out improper conduct
4. Evade legal obligation.[359]

And as such(as agents of the company), the company who is a legal personality bears all the risks involved while they bask in the wealth of the crimes committed in the name of the company. This is what the doctrine of lifting the veil was created to abate.[360]The operation of this doctrine (Lifting the Veil) is recognized by both common law and statutory law in Nigeria; hence, the discussion into the above doctrine will be under the two subheads.[361] By this the researcher seeks to point out that there are various circumstances under which the law authorizes for the veil of incorporation to be removed/lifted, or the principle of separate legal personality to be repudiated. These instances, fall under the umbrella of common law and statute.

---

[359]Supra

[360]J.O. Orojo, *Company Law And Practice in Nigeria* (5th Edition) 88-89.

[361] N.C.S. *Ogbuanya, Essentials of Corporate Law Practice in Nigeria* (2nd edn, Lagos: Novena Publishers Ltd, 2014) 200

Speaking on this (whilst witling down the principle in Re Salomon[362]), the proactive and articulated Lord Denning MR stated rightly in the Case of Littlewoods Stores Ltd v. I.B.C[363]that;

> "The doctrine laid down in Salomon's Case has to be watched very carefully. It has been supposed to cast a veil through which the Court cannot see. But that is not true. The Courts can, and often do, draw aside the veil. They can and often do pull down the mask. They look to see what really lies behind." Fire Stone Tyre& Rubber Ltd v. Llewellyn [364] Jones v. Lipman[365]

The above move was obviously as a result of the fact that the principle of separate legal personality, like every other, though created to reduce the unnecessary liability of members and directors towards the activities of the company; had become a tool for embezzlement, fraud and other ill-vices. Therefore, the doctrine of lifting the veil of incorporation was a way forward in corporate accountability. It acts as a platform for checks and balances in corporate affairs.

Veil piercing doctrine was also applied in the case of Trustor AB v Smallbone.[366]In the instant case, Mr. Smallbone had been the managing director of Trustor AB, and the company claimed that in breach of fiduciary duty the former transferred money to a company that he owned and controlled. Trustor AB applied to treat receipt of the assets of that company as the same as the assets of Mr. Smallbone. It argued that

---

[362](1897) AC 22

[363] (1969) 1 WLR 1241

[364] (1957) 1 WLR 464

[365] (1962) 1 WLR 832

[366] [2001] 1 WLR 1177

Smallbone's company was a sham to help breaches of duty, it had been involved in improper acts and the interests of justice demanded the result.

Furthermore, in 2013 the English Court in the case of Prest v. Petrodel Resources Ltd,[367]per Lord Sumption gave in his judgment noted that there was only a limited power to pierce the corporate veil, namely when people were under an existing legal obligation which is deliberately evaded. He went further to state that Fraud cuts through everything. A veil could be pierced only for the purpose of depriving the company or its controller of the advantage they would otherwise obtain from the company's separate legal personality. In the instant case, he continued, there had been no evidence that Mr. Prest had set up the companies to avoid any obligations in these divorce proceedings, so there was no ground for piercing the corporate veil.

The Companies and Allied Matters Act,[368] like the common law as discussed above also provided for certain circumstances under which the principle of separation of legal personality or the corporate veil as it were, can be lifted. And like the common law, these

---

[367] [2013] 4 All ER 673

[368] Cap C20 2004

circumstances mostly covers fraud of company officers[369]and misappropriation of funds[370] etc. Some other circumstances for the corporate veil to be lifted are:[371] where the company carries on business with less than two members and does so for more than 6 months, where a company carries on business with below two directors for more than 60 days,[372]political donations.[373]

For the sake of emphasis, the researcher wishes to state that, like other sections of the law,[374] the doctrine of lifting the veil was established and given statutory stamp by the provision of section 190 (1) (b) and (c) of CAMA, which provides thus:

> Where a company- receives money or other property by way of advance payment for the execution of a contract or project; and with intent to defraud, fails to apply the money or other property for the purpose for which it was received, every director or other officer of the company who is in default shall be personally liable to the party from whom the money or property was received for a refund of the money or property so received and not applied for the purpose for which it was received: Provided that nothing in this section shall affect the liability of the company itself.

---

[369]CAMA 2004 s504, 505 and 506

[370] CAMA 2004 s290

[371] CAMA 2004 s93

[372] CAMA 2004 s246 (1) (3)

[373] CAMA 2004 s38 (2)

[374] CAMA, Cap. C20, LFN 2004

Lifting of the veil becomes necessary where the canopy of legal entity is to be used to defeat public convenience, justify wrong or perpetrate a crime.

> Finally, in the (2018) case of Bell Atlantic Telecommunications Ltd v. Ndon,[375] the Court of Appeal held per Saulawa JCA thus:

Indeed, a situation may arise as in the instant case, where the corporate veil of a company may be lifted with a view to making either a Director, Agent or both of the company liable for the company's behalf. See Sections 93 and 290 of the Companies And Allied Matters Act, CAP. C20 Laws of the Federal Republic of Nigeria, 2004.

4.8 Required Co-operation from Operators and Monitors

An international environmental group called Greenpeace in 2009, revealed a three rear investigation on transboundary movement of harmful wastes from western countries to developing countries. According to the report, second hand electronic products which were to be recycled or completely disposed of in western countries were shipped to Nigeria, where they were sold as scrap or illegally dumped in the environment. Consequent to this report, the Federal Government and the Federal House of Representatives have taken the NESREA and Nigerian Customs Services to oversee the issue. However, this task appears to be impossible as the NESREA and other relevant agencies have lost control over the indiscriminate disposal of harmful wastes in Nigeria.[376]

It should however be noted that responsibility for environmental degradation is not limited to the federal government and oil exploration companies, as Nigerian citizens

---

[375] (2018) LPELR -44431 (CA) p. 21-23, par. D-D

[376] T.A. Yusuf, 'Trafficking and Dangerous Disposal of Hazardous Wastes in Nigeria: Tackling the Root Cause' [2009] <https://www.nigeriansinamerica.com/trafficking-and-dangerous-disposal-of-hazardous-wastes-in-nigeria-tackling-the-root-cause/> accessed 13th October 2019

also play a hand in this through careless refuse dumping in open dump sites around towns and cities. In a case study conducted in the Kano metropolis, it was found that the prominent ad visible feature that welcomes guests along the major streets of Kano are heaps of municipal solid wastes. Such notorious areas include Gyadi-Gyadi Court Road, Naibawa, Mosque Road, Jayin Filling Road, Koraf Ruwa Katsina Road, Sabon Gari Market, Kasuwan Kwari, Singer, Bata, Bompai and so on. The Kano metropolis is among the fastest growing cities in Nigeria, with a population estimated at 3.5 million and a population density of about 1000 inhabitants per Km. it is one of the most crowded cities, hence the generation of municipal wastes in heaps on daily basis are enormous. It is also of the view of researchers that the urbanization process in Kano has gone wrong. The heaps of waste piling up with each passing day are due to the massive indifference on the part of the people and their loss of affective and responsible relation to the environment as a result of colonialism. It was also reported that the cause of persistent problem of solid waste is the fact that the Kano state government had problems with solid waste management because this function it traditionally a local government obligation. As a result, there is a lack of coordinated jurisdiction and there has been no standards or specifications established. Also, insufficient knowledge of some of the residents in Kano metropolis of the ways in which the environment functions, has contributed to the heaps of municipal solid wastes in the state capital.[377]

Also, in Lafia, Nasarawa State, residents have complained of the indiscriminate dumping of refuse in the heart of the city. It was made known that in spite of intensified efforts by the state government through the Nasarawa Urban Development

---

[377] A.W. Butu and S.S. Mshelia' 'Municipal Solid Waste Disposal and Environmental Issues in Kano Metropolis, Nigeria' [2014] 1 (2) British Journal of Environmental Sciences <http://www.eajournals.org/wp-content/uploads/Municipal-Solid-Waste-Disposal-and-Environmental-Issues-in-Kano-Metropolis-Nigeria1.pdf> accessed 15th October 2019

Board to keep the city clean with the provision of trash cans at some locations and ensuring that workers of the sanitation unit of the urban development board clear the refuse daily, most residents seem to be uncooperative as it was observed that they prefer to throw refuse on the ground and in drainage. Residents seem not to be concerned by the fact that they are living in close proximity to filth as they move about their normal businesses. On the outskirts of Nasarawa, heaps upon heaps of refuse can be found lining the major roads leading out of the state, into Abuja. On those same roads, residential areas, plazas, markets where food stuffs are sold, and many other urban establishments are found.[378]

4.9 Utility of Criminal Application in Analysis Criminal Responsibility

> In Nigeria, prior to the 1980s, only a relatively small and enlightened minority saw the need for protection of the environment. Even then, the concern and focus were usually directed at localized problems of health and welfare and rectification of immediate problems of conservation and exploitation of economically important resources. Thus, in the realm of criminal sanctions we had enactments or statutory laws like those contained in the Criminal Code[379]; the Oil Pipeline Act, 1956; the Forestry Act, 1958[380]; Public

[378] 'Residents Decry Indiscriminate Refuse Dumping in Lafia' Channels Television (21 March 2017) <https://www.channelstv.com/2017/03/21/residents-decry-indiscriminate-refuse-dumping-in-lafia/> accessed 15th October 2019.
[379] CC Act s246 prohibits burials in house without consent, while s247 prohibits acts which render the atmosphere noxious to the health of persons in specified places. S. 245 prohibits the fouling of water
[380] This generally made provisions relating to the presentation and control of Nigeria forestland.

Health Act, 1958; Destruction of Mosquitoes Act, 1958; Minerals Act, 1958; Oil in Navigable Waters Act, 1968[381]; Quarries Act, 1969; Sea Fisheries Act, 1971[382]; and Bees (Import Control and Management) Act, 1976[383]. There exist other legislations having similar focus.[384]

Since the 1980s when Nigeria commenced its shift of focus from industrial to post-industrial values, the government has found itself threatening from time to make increasing use of criminal sanctions. This threat broadened significantly in response to media attention surrounding the publication in 1988 of illegal dumping of toxic wastes of Italian origin on a site in Koko, a small port town in the southern part of Nigeria. As observed by Pita Agbese[385], this incident was the catalyst needed to wake up both government and the populace to their responsibilities toward the protection of the environment. The development gave birth to environmental laws that were 'micro' in outlook and legislation that combined environmental planning and

---

[381] NWA 1968 s1, 2, 3, 4, 5, 6 and 7 prohibits the discharge of oil into designated sea areas.
[382] SFA s2, 8 and 38.
[383] Bees (Import Control and Management) Act 1976 s1, 8, 9, and 10 regulates motor fishing without the Nigerian territorial waters
[384] A.M.A. Imevbore. and M.T. Okorodudu-Fabara, M, "Review of Existing Laws and Statement on the Environment in Nigeria", in the Making of the Nigerian Environmental Policy, FEPA Monograph, 1991.
[385] P O Agbese, *Nigeria's Environment: Crises, Consequences, and Responses in Environmental Policies in the Third World* (1995, MacMillan Press Ltd., Hampshire)

protection, conservation of natural and cultural resources and, development and resources allocation.

Nigeria immediately after the Koko incident promulgated the Harmful Waste (Special Criminal Provisions (HWSCPD)Act 1988[386] Consequently, FEPA was set-up[387] and as a specialized central agency for the protection of the Nigerian environment, it was delegated among others with the task of enforcement i.e prosecution and application of sanctions. To complement the provisions of the HWSCPD, the Agency also has conferred on it the direct use of criminal law as a mechanism for the control of environmental crimes in Nigeria.[388] Since then, virtually all the environmental legislations enacted have been laced with criminal provision for their enforcement.[389] We can in this regard talk of the National Environmental Protection (Effluent Limitation) Regulations, 1991[390]; the Environmental

[386] 1988, Cap H1, LFN 2004

[387] Decree No. 42 of 1988.

[388] Decree No. 58of 1988. In May 1999, FEPA was absorbed into the newly created Ministry of Environment by a Presidential Directive No. SGF 6/5 221 of 12/10/99. Some other Ministries were directed to release some of their departments/units to the new Ministry of Environment. the NEW Ministry did not seem to proceed to carry out the functions of FEPA under the FEPA Act in the absence of an amendment of the Act by the National Assembly ,the FEPA Act has since been replaced by the NESREA Act.

[389] Ibid, s20, 25, 26, 27, 35 and 36.

[390] Quite a number of states have also enacted legislation with similar focus – see Lagos State Environmental Pollution Control Edict, 1989.

Impact Assessment Act, 1992[391]; Nuclear Safety and Radiation Protection Act, 1995[392], and of recent the NESREA Act.

For the purpose of analysis, the writer shall attempt a broad categorization of environmental crimes into two groups, namely, serious specific offences and regulatory or preventive prohibitions. Since it is absolutely impracticable to undertake a comprehensive categorization of how Nigeria has promulgated its environmental offences, it is the intention of this writer to simply highlight some examples from the different categories. At this juncture, it is significant to point out that there is no hard and fast rule on what should fall under what category. Indeed, what will easily become noticeable in the course of the analysis of this work is that some offences lie on the boundary between the two categories while some do not fit readily into any of the categories.

4.9.1 The *Actus Reus*

[391] EIAA sI.8 of 1991. This makes it mandatory for industrial facilities generating wastes to retrofit or install at commencement of operations anti-pollution equipment for detoxification of effluents and chemical
discharges. On conviction for contravention, the penalty is a fine or imprisonment or both such fine and imprisonment – section.5.

[392] NSRPA sI.9 of 1991. This spells out restrictions on the release of hazardous or toxic substances into the air, water or land of Nigeria's ecosystem beyond limits approved by FEPA. On conviction for contravention, the penalty specified is a fine or imprisonment or both such fine and imprisonment.

The *actus reus* for the offences under the HWSCPD is constituted by carrying, depositing, dumping transporting, importing, selling or buying harmful waste. The term 'harmful waste' is defined in section 15 as meaning any injurious, poisonous, toxic or noxious substances and, in particular includes nuclear waste emitting any radioactive substance. The definition further states that the harmful waste must be in such quantity, whether with any other consignment of the same or of different substance, as to subject any person to the risk of fatal injury or incurable impairment of physical and mental health[393]. Clearly, it is no offence that a person carried, deposited, dumped or transported harmful waste. Liability is contingent upon the harmful waste being in such a quantity as to cause any of the above harm. The fact that the harmful waste is placed in a container shall not by itself be taken or exclude any risk which might be expected to arise from the harmful waste.

It cannot be argued that the above definition of harmful waste is extremely wide. It will cover any substance that has the effect of degrading the environment. However, given the expensive ambit of the word

[393] HWSCPD s5.

‘quantity’ and the complexities of medical and scientific proof there are likely to be problems relating to what quantity of harmful waste will suffice to ground liability. It is this that would lead to conflicting decisions.

4.9.2 The *Mens Rea*

It is not unusual with respect to statutory offences to file cases where there exist no clear direction for the Court as to the need or otherwise for *mens rea* as a constituent part of the crime.[394] Under the HWSCPD for instance, *mens rea* is not an element for all those charged with the offences of carrying, depositing, dumping, transporting, importing, selling or buying harmful waste. The Decree merely provides that those involved in such activities without lawful authority shall be punished. Consequently, the courts are left to decide not only the *mens rea* question, but also what the appropriate standard of *mens rea* is intended to be.

Over the years, the courts[395] have adopted either of two lines of approach. One approach is to evaluate whether public is best served by upholding the traditional principles of the criminal law which favours the

[394] HWSCPD s6.
[395] HWSCPD s7.

defendant. In the other approach the judge concentrates upon the fact that the legislature is seeking to outlaw certain conduct, the accused has committed it and no more is required.[396] The fact that the offence was never intended or that the accused was not even aware that what he is carrying is harmful waste until so detected is immaterial. Again, this does not allow for uniformity of decisions. It can effectively be argued that the failure to indicate mens rea is to take care of those who deliberately refrain from making inquiries, preferring not to know the result or avoiding the truth.[397] What will complicate the argument is where the person who actually carried out the act or who innocently made the omission which constitutes the crime is in addition found to have exercised due diligence. By section 2 of HWSCPD such a person would still be deemed to have committed the crime. In reality however, the attitude of the court would be one of helplessness and reluctance. Invariably, it would be more difficult for the prosecution to achieve a conviction.

---

[396] HWSCPD s15.

[397] The general principle at common law is that *mens rea* applies to all the ingredients of an offence. It can
however be excluded by statue expressly or by necessary implication. The court in *He Kaw v. The Queen* (1985) 157 CLR 523, mentioned four factors which could imply a legislative intention to exclude *mens rea*: the language of the section, the subject matter of the statute, the consequences of the offence for the community, and the potential consequences for the accused if convicted.

Of interest is section 6 (a) and (b) of the Decree in relation to this issue of *mens rea*. By these subsections, any carrier, including aircraft, vehicle, container etc. used in the transportation or importation of harmful waste or any land on which the harmful waste was deposited or dumped is to be forfeited to and vest in the Federal Military Government. What happens where the aircraft in question is on lease for regular airlifting or cargo and the charter merely divert it for his illegal purpose without the knowledge of the lessor (true owner)? What if the land upon which the harmful waste has been dumped belongs to farmer who knows nothing about the dump?

What the court will be faced with in the above situations are constructive offences where the fault of one person is imputed to another who was not in any way involved in the entire event. The requirement of *mens rea* in the form of 'knowledge' is what would have afforded these innocent persons a cogent defence in the protection of their property.

We can contrast 5 and 7 with section 6 (a) and (b). under section 5 person who assist another who has to his knowledge committed a crime under the Decree in order to enable him escape punishment is an accessory

after the fact and is guilty as such. Section 7 on the other hand is in relation to crimes committed by a body corporate. Where this is proved to have been committed with the consent or connivance of or is attributable to any neglect on the part of a director, manager, secretary, other similar officer of the body corporate or any person purporting to act in those capacities, he as well as the body corporate shall be liable to be proceeded against and punished accordingly.

There is no doubt that *mens rea* is an element of the offences in section 5 and 7 to the extent that 'knowledge', çonsent', çonnivance' and 'neglect' governs the *actus reus* of these offences. Liability under these sections will only rest on proof that the accused with the requisite guilty mind contributed in material respect to the principal offence. Furthermore, and in line with the traditional principles of criminal law, the onus of proof is on the prosecution. [398] However, while it can substantially be said that standard of proof required to satisfy the concept of 'knowledge', 'çonsent' or connivance' is clear, same cannot be said of the word 'neglect'. Ordinarily, negligence is generally perceived as a concept of the law of tort,

[398] See *Aderemi Aderounmu v FRN* (2019) CA/L/782C/2018, *Ankpeghen v State* (2018) LPELR – 43906 (SC), Ikpo v State (2016) 2-3 SC (pt 111)88, *Cvrolmington v DPP* (1935) AC 462.

carrying with it a lower standard of proof i.e. 'blameworthiness'. With the way the HWSCPD is silent on the relevant standard of negligence, it becomes unclear what standard is imposed by section 7. The writer will now consider the effect in some other jurisdiction where similar provision exists.

In the case of SPCC v. Kelly[399] it was the view of Hemmings. J. that it was the civil standard which applied. For instance, in the words of His lordship, in the context of section 6 of the Environmental Offences and Penalties Act, 1989 of New South Wales, negligence is the failure to exercise such care, skill and foresight that would be expected of a reasonable person in the particular situation of the person charged. When, however, NSW Sugar Milling Co-op. Ltd v EPA[400]came before the court, Enderby J. held the position that the negligence which is required to be proved by the prosecutor in such a case of the criminal type.

---

[399] Several justifications have been given for this second approach: that the existence of the need for proof of *mens rea* will complicate the prosecution's task; that to include *mens rea* as an element of crimes of this sort would be to encourage defended cases; and that consequences of conviction are so trivial as to make the somewhat harsh rule justifiable.
[400] (1989) 63 ALJR at 3.

When the case of EPA v. Ampol Ltd[401] came before the court in 1993, it was the view of the court that negligence could mean any one of ‘gross’ negligence, the civil standard or some statutory half measure depending on the circumstances of the case.[402] In that case it was found that Ampol had actually complied with all regulatory instructions and EPA requirements in spite of which there still occurred a spillage from one of the underground tanks of a fuel depot of which Ampol was the owner/lessor. Ampol in addition had taken action to ensure that the lessee followed the correct operational procedures. Consequently, Ampol as owner of land was charged for negligently causing or contributing to the conditions which gave rise to the commission of the offence.

4.9.3 Serious Specific Offences.

A likely answer to the question “why serious offences” would be that they constitute the most emphatic denunciation by the society of a particular type of Crime. Most times, specific offences are largely the

[401] (1992) 75 LGER 320.
[402] This is unlike s1 of the Decree, which in a departure from the traditional principles of criminal law appeared to have reversed the onus of proof so that the accused has the burden of showing that the carriage, dumping deposition etc. of harmful waste was lawful and authorized.

product of a ‘reactionary phase. For instance, if a most serious environmental offence is being committed or is found to be on the increase, the usual attitude in official circles appear to encourage offensive activities by whosoever thereby instituting deterrence mechanisms. However, today in Nigeria, the best developed of these kind of offences are those covered by the HWSCPD aftermath of the ‘Koko’ incident.

Under that act, it is an offence for anybody to without lawful authority carry, deposit, dump or cause to be carried, deposited or dumped or is in possession for the purpose of carrying, depositing or dumping any harmful waste on any land or in any territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways[403] and for anyone to transport or cause to be transported or is in the possession for the purpose of transporting any harmful waste.[404]

For individual offenders[405], conspirators[406] and accessories after the fact[407] the penalty after conviction

---

[403] sI.15 of 1991.
[404] Decree No. 86 of 1992 (now an Act). The primary aim of this statute is to infuse environmental considerations into development project planning and execution. Any person who fails to comply with the
provisions of the Act shall be guilty of an offence and on conviction shall be liable to pay a fine or be imprisoned.
[405] Decree No. 18 of 1995. The goals of this statute, among others is to ensure protection of life ,

is life imprisonment.[408] For corporate bodies, both its officials as well as the body corporate shall be guilty of the crime and shall be liable to be proceeded against and punished accordingly.[409] Nonetheless the punishment appear to be laughable except for that provided in the HWSCPD. Yet that too probably due to life imprisonment provision appear not practicable or ignored by those who ought to apply it. It is obvious that there is lack of political will lead to ensure establishment of environmental crime and its prosecution in Nigeria.

4.10 Methods of Enforcement of Environmental Sanctions

There are many methods which can be applied to ensure that environmental pollution or degradation is not with appropriate sanction and that any sanction is enforced. The researcher divided the methods into 3 viz;

1. By Provisions of legislations

---

health, property and the environment from the harmful effects of ionizing radiation by regulating the possession and application or radioactive substances and devices emitting ionizing radiation. The penalty
for contravention is a fine or imprisonment or both such fine and imprisonment. In addition the Nigerian
Nuclear Regulatory Authority (NNRA) may cancel, revoke or suspend any registration, exemption or license that might have been granted – S. 45.

[406] HWSCPD s1(2)(a)

[407] HWSCPD s1(2)(b).

[408] HWSCPD s2

[409] HWWSCPD s3.

2. By Court pronouncements
3. Actual Implementation of sanctions

4.10.1 By Provisions of legislations

There is nogainsaying the fact that more than adequate legislations exist on enforcement of sanctions for any environmental degradation. Some of the sanctions are by award of damages for purely civil matters or fines and/or imprisonment in crimes. One of the foundations of sanction is the polluter pays principle. This ensures that whosoever pollutes must pay either by remediating the environment to its original state or payment of adequate monetary damages to the victim(s). Atimes the legislations provide the maximum penalties for any environmental degradation. Atimes recourse is to the Courts of law for redress.

> The Courts are expected to be knowledgeable on issues of environmental degradation so as to understand the gravity and apportion appropriate sanction. This the Courts can do by awarding damages that will meet the justice of any action before it as seen in Gbremre v SPDC[410] in which the Federal High Court sitting at Benin City, Edo State delivered a landmark decision. The Court examined and distilled all aspects of the effects of oil spill on the environment including the right to life and healthy living. This decision the

[410] (unreported suit No. FHC/B/CS/53/05)

researcher believes is in tandem with what obtains in other climes.

4.11 Limitations on Use of Criminal Sanctions

Virtually all Federal Agencies are empowered to mete out criminal sanctions. Yet the police and the Attorney General of the Federation are key to the operations of the Agencies in relation to prosecution.[411] Thus, there is always a distinction between investigative agency, enforcement policy (which is the task of NESREA) and a prosecutor agency. Enforcement policy (which is the task of the Ministry of Justice and the Police in conjunction with NESREA). Since our aim is not to discuss under this head the practical problem of investigating environmental crimes, or the administrative arrangement for investigation and prosecution, we can assume that the intricacies of the alleged environmental violations have been unraveled. We can further assume that the evidence to establish those intended to be charged has been collated. These assumptions notwithstanding, the task of enforcement is by no means complete.

[411] In line with provisions of s. 61 of the Banks and Other Financial Institutions Action (BOFI) and s 650 of the Companies and Allied Matters Act, a director includes any person occupying the position of a director by whatever name called, or empowered to carry out the same functions of a director or in accordance with whose directions or instructions the directors of a company are accustomed to act.

4.12 Issues in Prosecution

Several other problems can be enumerated in the selection of an appropriate charge or charges to successfully bring the prosecution to conclusion. First is the earlier noted problem of establishing the offence to match the gravity of the degradation and thus aid to secure an appropriate penalty sufficient for the cardinal objective of deterrence. Second is the increasing difficulty of obtaining evidence of wrongdoing associated with the privilege against self-incrimination. Since self-monitoring is the bedrock of most pollution control systems, regulatory authorities are always placed in a position of great difficult in attempting to enforce pollution control statutes in the absence of self-monitoring records for use in criminal proceedings. A third problem relates to the need to strike a balance between the inordinate cost of the proceedings (in terms of human and material resources) and the eventual outcome. A fourth issue relates to the vast number of cases that regulatory Agencies must from time to time content with (caseload considerations).

4.13 Required Quantum of Proof

Usually proof is on the preponderance of evidence in civil and beyond reasonable doubt in criminal trials.

Occasionally, proof of particular crude oil spills can be done using reports and experts from the regulatory agencies. Most of the times, these reports of Experts from the regulatory agencies are like a double –edged sword; there may be aspects of such evidence that may aid or destroy the Plaintiff's case. Furthermore, the independence and integrity of the reports and the experts from the regulatory agencies may be called into question in specific cases because when an aggrieved goes to Court, he brings an action under Nuisance, Negligence or the Rule in Rylands v. Fletcher[412] This involves proving that the defendant owes him a duty of care and that the duty has been breached. It is a heavy burden on the claimant who is a victim in cases of environmental harm. The burden of proving negligence for instance is higher on the plaintiff in complex cases involving special skill and technology in order to prove that the defendant or his employees was negligent. This was exemplified by decisions in J. Chnda & ors v Shell B.P[413] and Adhemore v Shell B.P[414]. In Seismograph

[412] (1886)UKAL 1
[413] (1974)2 R.S.L.R. 1
[414] Suit: UCH 12/70 Ughelli High Court Jan 28, 1971

Services v Mark[415] the plaintiff claimed compensation for damages from the defendant for the destruction of his fishing nets by a sessanic boat, it was impossible for the plaintiff, an ordinary fisherman to show that the company acted regligently even though his fishing nets was destroyed, the Court of Appeal dismissed the case. Such inability to prove negligence became fatal to another the case of the plaintiff in Atubin Gas v Shell B.P[416]. Again, obtaining relevant information from the regulatory Agencies is usually difficult and this has given room to speculations that these reports are not independently and objectively prepared by these Agencies.

Most often even if a Plaintiff proves that there was spill from the facilities of the Oil Company, there is still need to prove the extent of the spill in terms of the area impacted. More often than not a third expert that would be required in proof of pollution claims is the Estate Surveyor and valuer. He must be a qualified and licensed Estate Surveyor and Valuer. He too must visit the locus in quo to obtain relevant details of the loss or damage occasioned by the spilled crude oil and quantify same in monetary value as suffered by the damage for

[415] (1993) 7 NWLR 203
[416] Suit No. UCH/48/93 High Court of Justice Ughelli, Judgment Delivered on 12/11/1974

the Plaintiff which will form the basis of the special damages that the Plaintiff normally will claim in the Suit. The Valuer at the conclusion of his work would then prepare a valuation report. He must then be called to testify and tender the said report in evidence. It is necessary to bear in mind that admissibility is distinct from the weight to be attached to any piece of evidence. Therefore, such piece of evidence whilst being admissible, may give rise to issues of the weight to be attached thereto especially where only one of the experts who jointly prepared the report is called as a witness. The researcher posits that the state should make such harm to the environment crimes thereby prosecute the offenders. Furthermore, the state should train her own experts who will be knowledgeable and hardy to testify else the Nigerian state is not ready to take crimes to the environment serious. Thus the citizens will continue to suffer as deterrence punishment will never be made by the Courts. At this juncture, it is also imperative that the Courts must be specially trained to handle environmental matters as done in other climes like India and South Africa. Still government Agencies ought properly equipped too.

4.14 Implications of Expert Evidence on Environmental Crime

There is need for experts who prepared a report to testify in respect thereof so that the opposing party may not have the opportunity of canvassing that the report lacks probative value or weight because the maker thereof was not called to testify.

The Courts usually places a lot of premium on the evidence of Expert witnesses. Where expert evidence is unchallenged , the courts usually rely on such to give sound judgement. See SPDC Ltd v Edamkue[417] where the Court of Appeal held as follows:

> "The Plaintiffs in this case engaged the services of a number of experts in different field of study to carry out an assessment of their losses arising from the spillage. The reports were tendered at the trial and they formed the basis of their claims before the lower Court. The figures the experts arrived at after their studies in this case were not controverted. The Defendant did not challenge these figures by producing contrary report.
>
> …The trial Court was therefore right in accepting the figures presented to it through the witnesses called by the Plaintiffs since there was no contrary evidence tendered on the point"

[417] (2003)NWLR (pt 1832)533

The supreme Court affirmed the above decision of the Court of Appeal in SPDC Ltd v Edamkue [418].

The absence of any of the above mentioned expert witnesses in pollution cases could spell doom for the Plaintiff's case where same is being contested by the oil companies, which is usually the case. Tendering such reports without the expert who are the makers is akin to tendering document through persons who are not the makers. Such documents would not have any probative value and same would be worthless and unreliable. See Ademola v Olaifa [419] and Kayili v Yilbuk [420].

4.15 Some Basic Principles of Environmental Law

The basic principles distilled generally for the protection of the environment under laws are three folds. They are the precautionary principle, the principle of prevention and the polluter pays principle.

4.15.1 Precautionary Principle

This is a relatively new concept which is fast gaining notoriety in international law. This principle aims at precautionary measures by policy makers to adopt an approach which answers that no errors are made in excess of environmental protection[421]. It entails that all hands must be on deck to protect any form of harm to human being, other animals and plants in the safeguard of the ecosystem. That the legal framework

---

[418] (2009)14 NWLR (pt 1160)1
[419] (2012)17 NWLR (pt 1330)478
[420] (2015) 7 NWLR (pt 1457)26
[421] E La-Mon_George, Natural Gas Industry Eschews the Precautionary Principle available at <http:///Ezine/Aritcle.com?Expert> accessed 16th October, 2019.

on environment [422] at both international regional and national levels must conform to high standards of protection of the environment[423].

Human life is full of risks which we have to deal with. Science and technology can help in diminishing some risks of nature, as it is the case, for example, with life expectancy. On the other hand, science and technology have also contributed to the creation of new threats to human existence or quality of life. The emergence of increasingly unpredictable, uncertain and unquantifiable but possibly catastrophic risks has confronted societies with the need to develop an anticipatory model in order to protect humans and the environment against these uncertain risks of human action: the precautionary principle[424].

The precautionary principle traces its origins to the early 1970s in the German principle 'Vorsorge', or foresight, based on the belief that the society should seek to avoid environmental damage by careful forward planning. The 'Vorsorgeprinzip' was developed into a fundamental principle of German environmental law and invoked to justify the implementation of robust policies to tackle acid rain, global warming and North Sea pollution. The precautionary principle then flourished in international statements of policy. On a national level, several countries have used the precautionary principle to guide their environmental and public health policy. In the United States e.g., the precautionary principle is not expressly mentioned in laws or policies. However, some laws have a precautionary nature, and the principle

---

[422] A W Adewuni, *Contemporary Issues in International Environmental Law* (Ekiti State, Ekiti State University Printing Press,2007) 13. Such legal frame work as – the world charter for Nature(in its Article 12(b) The 1995 Vianna Convention for protection of Ozen layer 1992 United Nations Framework in climate change .

[423] EU (2000) Communication from the commission on the precautionary principle, COM1, Brussels: Commission of the European Communities.

[424] Hanson, M., *The precautionary principle* (2003), E.A. & Proops, J. Environmental Thought, Cheltenham (UK), Edward Elgar, 125-143.

underpins much of the early environmental legislation in this country (The National Environmental Policy Act, The Clean Water Act, and The Endangered Species Act).

The precautionary principle is based on the adage that 'it is better to be safe than sorry'. However, there is no universally accepted definition of the principle. The Rio Declaration states:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (Rio Declaration 1992, Principle 15).

A stronger definition can be found in an EU communication:

The precautionary principle applies where scientific evidence is insufficient, inconclusive or uncertain and preliminary scientific evaluation indicates that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the high level of protection chosen by the EU (EU, 2000).

Each formulation of the precautionary principle shares the common prescription that scientific certainty is not required before taking preventive measures. Moreover, most versions involve some degree of burden shifting to the promoter of an activity or product. However, it is important to note that none of definitions answer the question of the amount of precaution to apply in a given circumstance. In the case of the Amazon, we know that deforestation damages biodiversity although we remain unaware of many of the species that are disappearing (and much less of how we can estimate an economic value for such losses). We also know that deforestation

contributes to the enhanced greenhouse effect although we do not know the exact effects of increases in temperature.

The precautionary principle is relevant to many issues, especially those of environment and public health, global warming or sharp climate change, extinction of species, the uncertain risks of nuclear power or geoengineering, the introduction of new and potentially harmful products into the environment that threaten biodiversity (e.g., genetically modified organisms), threats to public health due to new diseases or techniques (e.g., AIDS transmitted through blood transfusion), persistent or acute pollution (asbestos, endocrine disruptors, etc.), food safety (e.g., Creutzfeldt-Jakob disease), and other new bio-safety issues (e.g., artificial life and new molecules). Besides its apparent simplicity, the principle has given rise to a great deal of controversy and criticisms, notably:

The precautionary principle is said to not be based on sound science. In this sense, critics claim that decision-makers are sometimes selective in their use of the precautionary principle, applying it for political reasons, rather than scientific reasons.

When applying the principle, society should establish a threshold of plausibility or scientific uncertainty before undertaking precautions. Indeed, no minimum threshold is specified across the definitions so that any indication of potential harm could be sufficient to invoke the principle. Most times, a ban on the product or activity is the only precaution taken.

Another often-raised criticism points to the potentially negative consequences of its application; for instance, a technology which brings advantages may be banned because of its potential for negative impacts, leaving the positive benefits unrealized.

Some say that the precautionary principle is impractical, since every implementation of a new technology carries some risk of negative consequence.

4.15.2 The Principle of Prevention

The target is to minimize effects if any pollution before it occurs. It is aimed at curtailment of anthropogenic sources of degradation of the environment. This method is adopted by the world Health Organization (WHO) as demonstrated by series of immunisation. Encourages social responsibility by individuals, government and organization as well as the world leaders on prevention of harm to the environment. Thus the international legal framework, the 1992 Convention on Protection and Use of Transboundary Water Course as provided for in its Article 2(6) 3(1) and 3(3). Bamako Convention on ban of imports into Africa and the control of transboundary movement and management of hazardous waste to Africa. This follows the adage that prevention is better than cure. Therefore, to prevent harm to the environment is much better than any form of clean-up.

Although much environmental legislation is drafted in response to catastrophes, preventing environmental harm is cheaper, easier, and less environmentally dangerous than reacting to environmental harm that already has taken place. The prevention principle is the fundamental notion behind laws regulating the generation, transportation, treatment, storage, and disposal of hazardous waste and laws regulating the use of pesticides. The principle was the foundation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989), which sought to minimize the production of hazardous waste and to combat illegal dumping. The prevention principle also was an important

element of the EC's Third Environmental Action Programme, which was adopted in 1983.

4.15.3 Polluter Pays Principle

It is a remedial measures aimed at ensuring that any polluter never goes free of liability so as to protect the environment by strict liability approach, as well as deterant penalties whether in civil or criminal actions[425] by award of damages in monetary terms in civil or fines and imprisonment in criminal actions.

Since the early 1970s the "polluter pays" principle has been a dominant concept in environmental law. Many economists claim that much environmental harm is caused by producers who "externalize" the costs of their activities. For example, factories that emit unfiltered exhaust into the atmosphere or discharge untreated chemicals into a river pay little to dispose of their waste. Instead, the cost of waste disposal in the form of pollution is borne by the entire community. Similarly, the driver of an automobile bears the costs of fuel and maintenance but externalizes the costs associated with the gases emitted from the tailpipe. Accordingly, the purpose of many environmental regulations is to force polluters to bear the real costs of their pollution, though such costs often are difficult to calculate precisely. In theory, such measures encourage producers of pollution to make cleaner products or to use cleaner technologies. The "polluter pays" principle underlies U.S. laws requiring the cleanup of releases of hazardous substances, including oil. One such law, the Oil Pollution Act (1990), was passed in reaction to the spillage of some 11 million gallons (41

[425] Ibid page 18 such as seen in legal frame work viz; the 1969 International Convention on Civil liability by Oil pollution Damages. NESREAS Act 2007; HWSCPA 1988, Cap H1, LFN 2004 and The International Fund for compensation for Oil Pollution damages.

million litres) of oil into Prince William Sound in Alaska in 1989. The “polluter pays” principle also guides the policies of the EU and other governments throughout the world. A 1991 ordinance in Germany, for example, held businesses responsible for the costs of recycling or disposing of their products’ packaging, up to the end of the product’s life cycle; however, the German Federal Constitutional Court struck down the regulation as unconstitutional. Such policies also have been adopted at the regional or state level; in 1996 the U.S. state of Florida, in order to protect its environmentally sensitive Everglades region, incorporated a limited “polluter pays” provision into its constitution

CHAPTER FIVE

SUMMARY AND DISCUSSION OF ANALYSIS OF DATA

FROM THE FIELD WORK

This chapter focuses on the presentation of data and analysis of data. The data were collected through the distribution of questionnaire to the adults in Abia central, north and south. This study sought to ascertain environmental crimes in Nigeria; focusing on a critical review of the law and the punishment

5.1 Data Presentation

The data collected from the distributed questionnaire were presented below:

5.1.1 Response Rate

A total of 300 copies of questionnaire were distributed to sampled respondents of which 293 copies were filled and returned successfully. 7 copies were not filled reasons because most individuals were either busy or refused to comply in filling out the questionnaire. Therefore 97 percent return rate was achieved hence provided the necessary data needed for this study.

Table 1 Response Rate

mber of tionnaire tributed	Number Returned	Percentage of Number Returned
100	97	32%
100	100	33%
100	96	32%
300	**293**	**97%**

Source: Field Survey, 2020.

5.1.2 Demographic Variables

The respondents' demographic variables were measured using question items 1 – 7 in the questionnaire. This study analyzed the age bracket, gender, state of residence, senatorial district, local government area and level of education. The analysis is reflected in the figures below:

Figure 1 Demographic Representation of Respondents

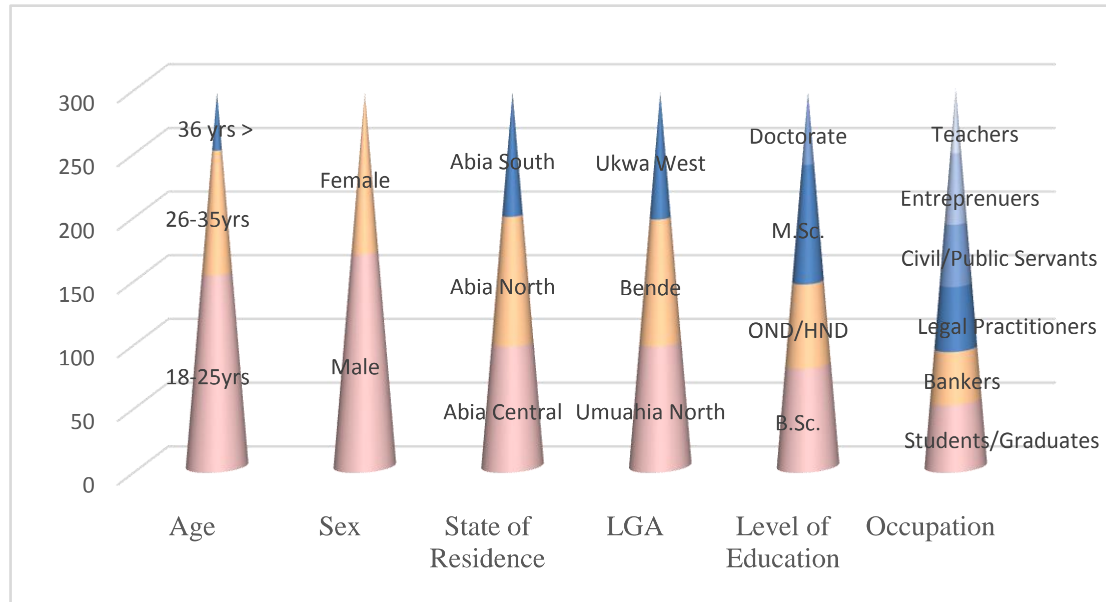

Figure 1 shows the demographic data of respondents. Under the age bracket, the table revealed thatrespondents within the age bracket of 18 – 25 years were 152 (52%), those within 26 – 35 years were 96 (33%) while respondents from 36 years and above were 45 (15%). The section for the gender of respondents showed that 168 (57%) were male while 125 (43%) were females. The state of residence of respondents revealed that 97 (33%) were residing in Abia central, 100 (34%) respondents were residing at Abia North while 96 (33%) were located at Abia South. Based on the level of education of respondents, the table showed that B.Sc. degree holders were 80 (27%), OND/HND degree holders were 65 (23%), M.Sc. holders were 92 (31%), while Doctorate degree holders were 56 (19). The occupation of respondents shows that

students/graduates were 52 (18%), bankers were 41 (14%), legal practitioners were 50 (17%), civil/public servants were 48 (16%), and entrepreneurs were 55 (18%) while teachers were 50 (17%).

Question 1: Is the term environmental crime understood by the citizens?

Figure 2 Response on what amounts to Environmental Crime

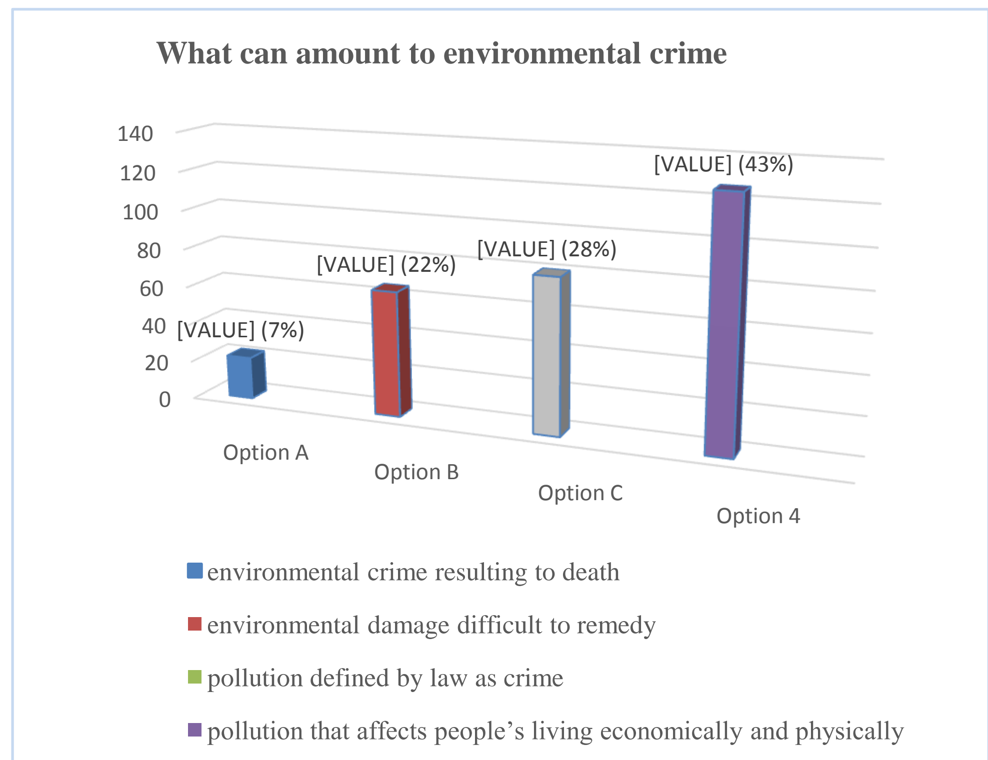

Figure 2 shows respondents views on what could amount to environmental crime. From the table, 22 respondents which is 7% agreed that what could amount to environmental crime are environmental

crime which could result to death, 65 (22%) asserts that environmental crime is as a result of environmental damage which is mostly difficult to remedy, 80 (28%) opined that environmental crime are pollutions to the environment as defined by law as crime while 126 (43%) were of the view that environmental pollution that affects people's living economically and physically should be regarded as environmental crime. More of the respondents chose option D.

Figure 3 Respondents Knowledge on Environmental Pollution which can amount to Crime

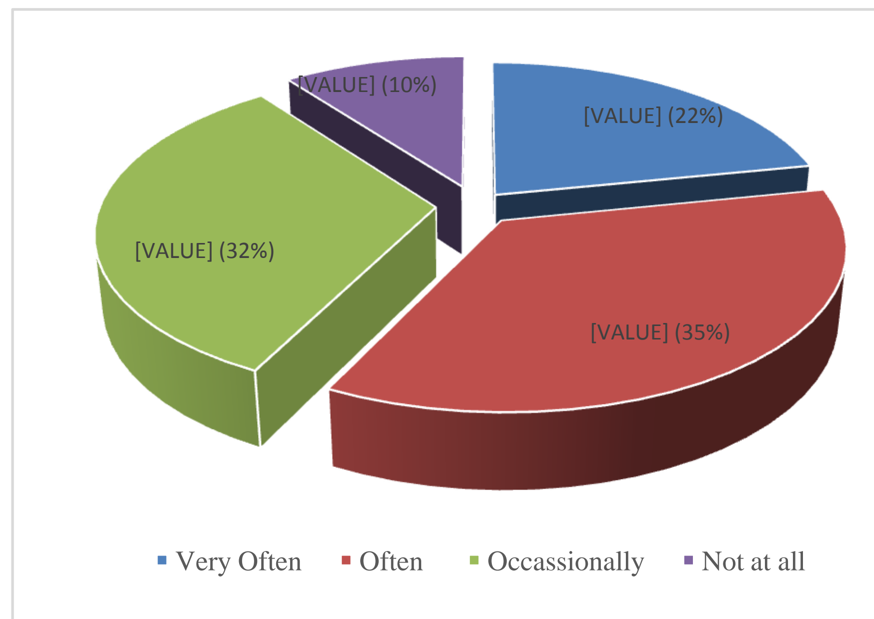

Figure3 shows the extent to which respondents hear of environmental pollutions which could lead to crime within their state. From the table, the analysis revealed that 64 (22%) agreed they hear of that very often, 104

(35%) of the respondents said they hear of environmental pollution resulting to crime often, 95 (32%) said occasionally while 30 (10%) do not hear of that. More of the respondents asserts that pollutions that are often regarded as state crime were being heard often.

Question 2: Does Nigeria have adequate laws to protect the environment from crimes?

Figure 4 Respondents View on whether their Environment is protected from Crime Pollution

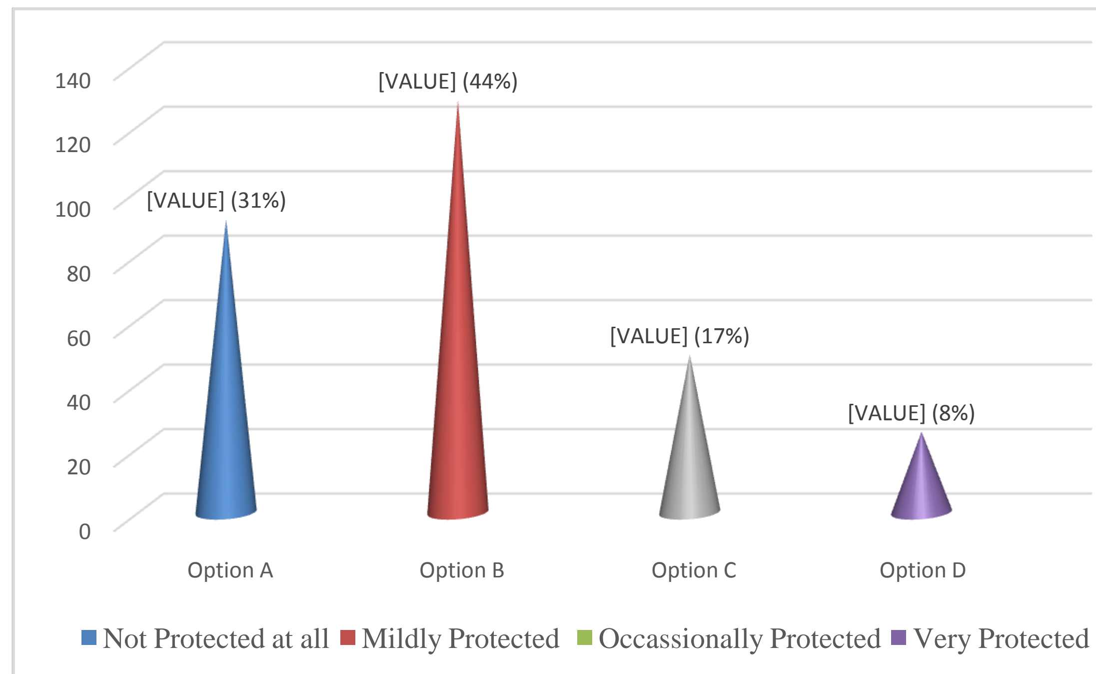

Figure 4 shows respondents view on if their environment is protected from pollution amounting to crime. The analysis in the above table revealed that 91 (31%) of the respondents opined that their environment is not protected from pollutions amounting to crimes within the state, 128 (44%) affirms that their environment was mildly protected from such pollutions, 49 (17%) said their environment was occasionally protected while 25 (8%) of the respondents affirms it was very protected. From the above representation, it could be deduced that the environment within the study

scope were mildly protected as such cases of pollution that could result to state crime were recorded on an increase.

Figure 5 Activities that Led to Environmental Crimes within the Area

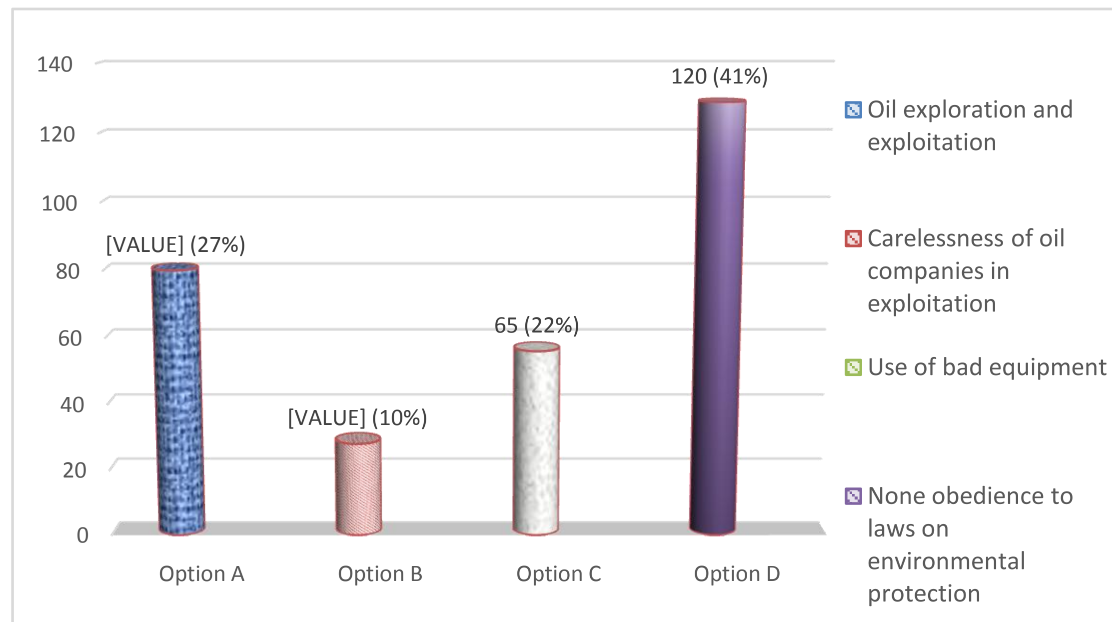

Figure 5 shows various activities that led to environmental pollution as viewed by respondents within their areas. The analysis proves that 80 (27%) of the respondents attests that oil exploration and exploitation within most communities led to environmental crimes, 28 (10%) affirms that carelessness in drilling activities of most oil companies

operating within their state has led to environmental crime as regards polluting their environment, 65 (22%) agrees that the use of bad and obsolete equipment by drilling companies causes environmental crime while 120 (41%) were of the view that none obedience to laws on environmental protection by major oil exploring companies leads to environmental crime punishable by the state. From the above analysis, more of the respondents' views were based on option D.

Question 3: Are those foist with environmental protection in Nigeria properly equipped?

Figure 6 Knowledge on how the Government Plans to Protect the Environment from Environmental Crime

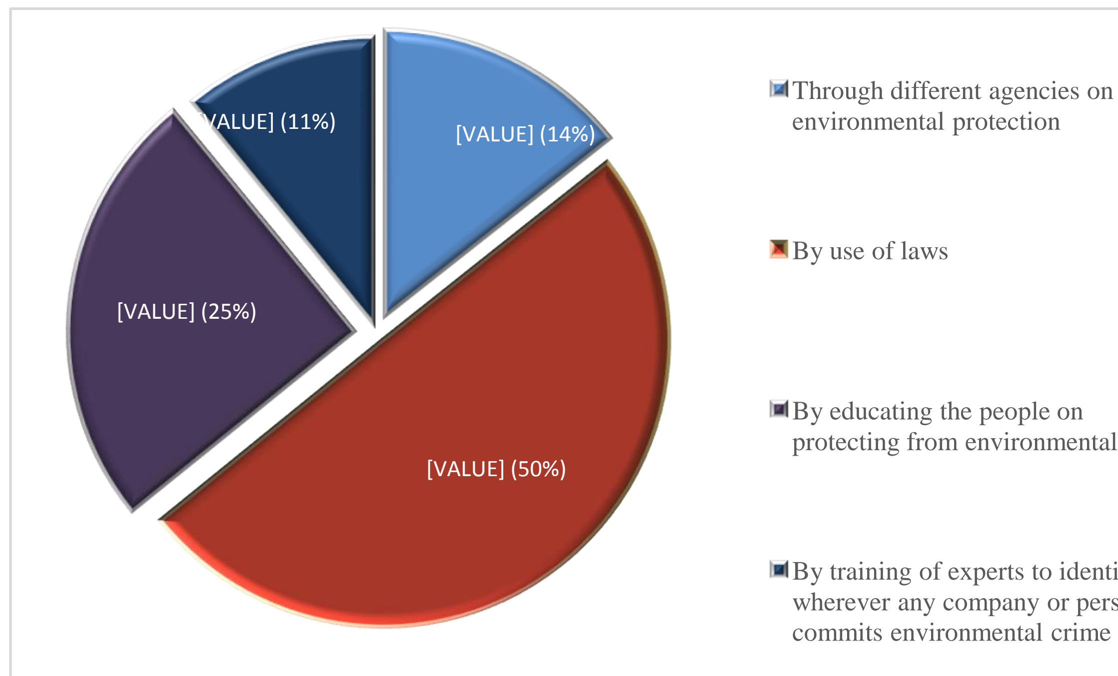

Figure 6 shows whether respondents know the various strategies their government is deploying to protect the environment from environmental crime. The analysis shows that 42 (14%) of the respondents were of the view that part of the government plans to protect their environment from environmental crime include equipping various agencies under the environmental protection to be active, 146 (50%) said by the use of laws, 73 (25%) attests that by educating people on the need for protection from environmental crime while 32 (11%) attests it was by training of experts to identify wherever any company or person commits environmental crime.

The researcher opines that a community reading of the analysis in figures 5 and 6 will clearly show that oil exploration is one of greatest source of pollution of the environment to the level of crime in Nigeria. Further that such environmental crimes are due to disobedience to laws relating to protection of the environment; therefore, it appears that more stringent laws which will relax proof beyond reasonable doubts is greatly needed so as save the Nigerian environment and its citizens.

Figure 7 How Environmental Crime can be Prevented or Stopped

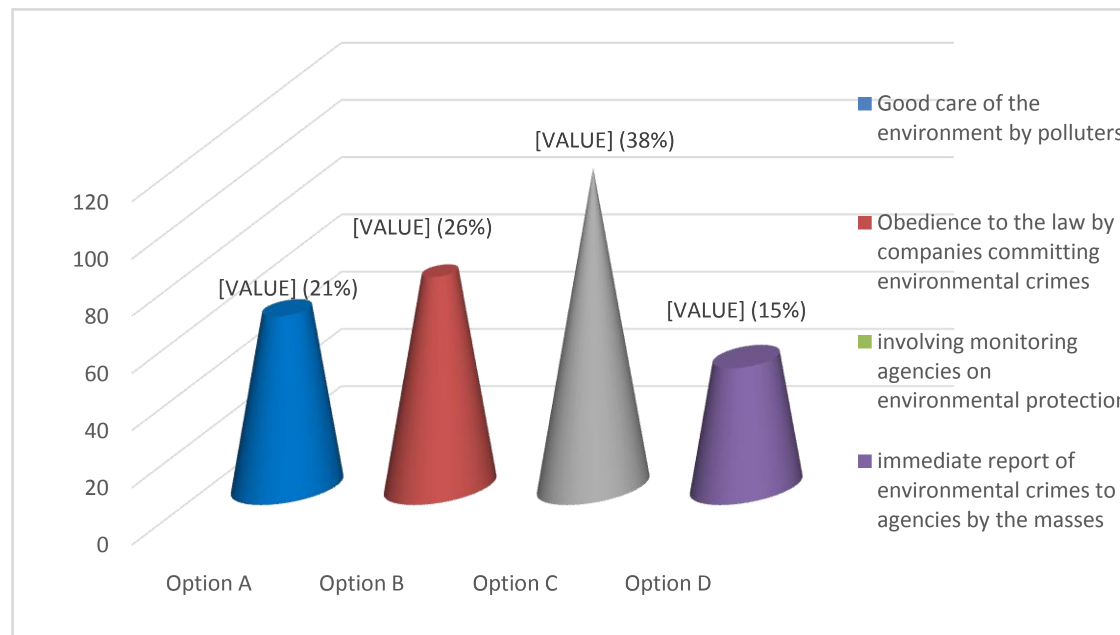

Figure 7 shows the various ways respondents perceived that environmental crime can be prevented or stopped entirely. From the analysis above, 62 (21%) of the respondents affirms that good care of the environment

by individuals or companies involved in polluting the environment would reduce or rather stop pollutions that would lead to environmental crime, 75 (26%) were of the view that adherence and obedience to the law by companies committing environmental crimes would stop environmental crime drastically, 111 (38%) opined that involving monitoring agencies to regulate the activities of companies acting against the environmental protection laws while 45 (15%) affirmed that immediate report of environmental crimes to various agencies charged in curtailing environmental crimes by the masses would reduce it. Most of the respondents stipulated that monitoring agencies would best reduce if not stop environmental crimes in the state.

Question 4: Are environmental crimes adequately punished by Nigerian laws?

Figure 8 Challenges Encountered when Investigating Environmental Crime in the State

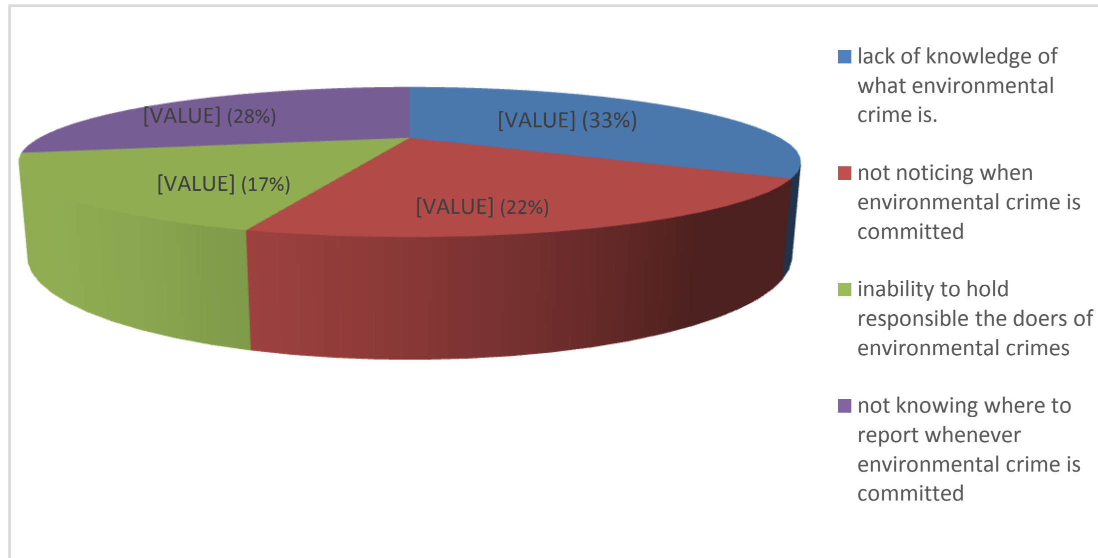

Figure 8 shows the likely challenges encountered within the state when investigating environmental crime. From the table, the analysis indicated that 98 (33%) of the respondents were of the view that lack of knowledge of what environmental crime is poised as a major challenge, 63 (22%) pointed that not noticing when environmental crime is committed was also a challenge, furthermore, 49 (17%) asserts that inability to hold responsible the doers of environmental crimes also affected how environmental crime should be curtailed within the state and 83 (28%) opined that people not knowing where to report cases whenever environmental crime is committed was also a major challenge.

Figure 9 Awareness of the Government Agencies Responsible for Protecting the Environment from Crimes

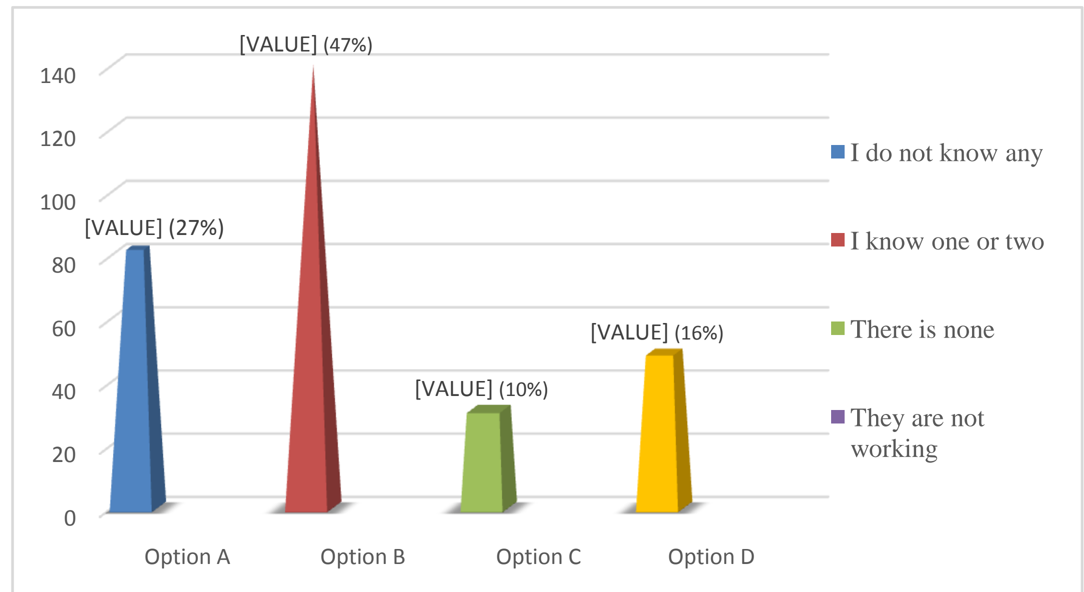

Figure 9 shows the respondents awareness level of government agencies responsible for protecting the environment from crime. The analysis revealed that 82 (27%) asserts that they do not know of any environmental agencies responsible for protecting the environment against crimes, 140 (47%) agreed that they were aware of one or two agencies, 31 (10%) said there were no agencies while 49 (16%) said there might be some but it is not very functional within the state.

Question 5: Should there be specially trained courts for environmental crimes?

Figure 10 Respondents' Views on Adequate Punishment liable to any Company or Person that Commits Environmental Crime

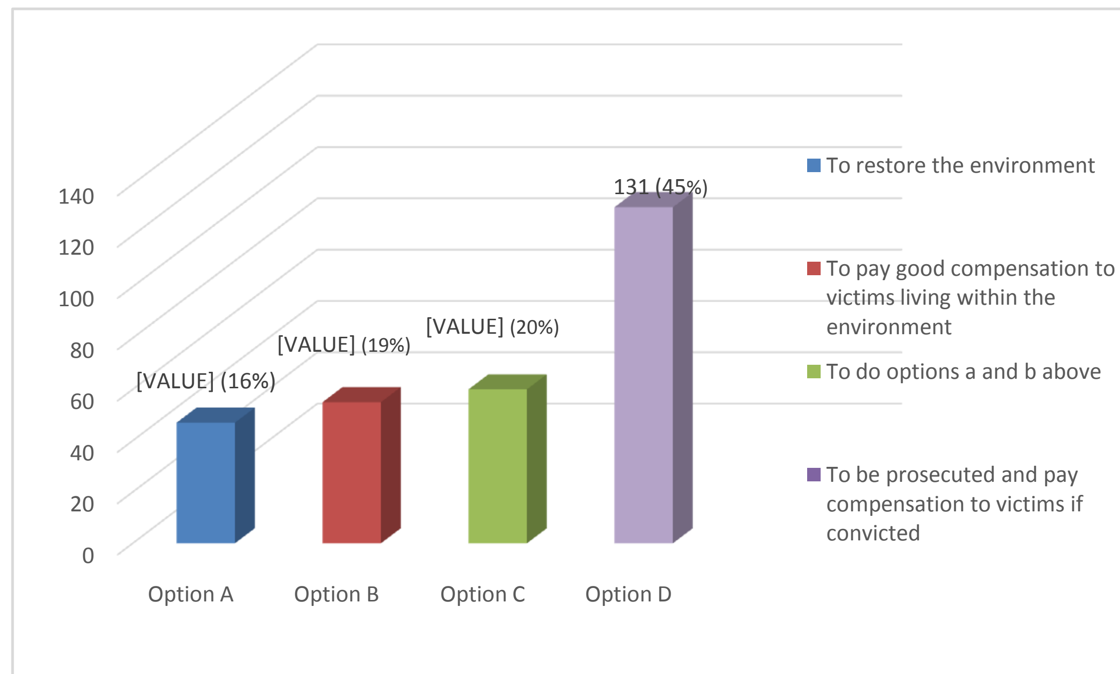

Figure 10 shows respondents' views on adequate punishment liable to any company or person that commits environmental crime. From the analysis, 47 (16%) were of the view that making committers restore

the environment back to how it was before polluting it would be a better punishment, 55 (19%) opined that to pay good compensation to victims living within the environment was a better punishment, 60 (20%) of the respondents agreed that options (a) and (b) above were better punishments while 131 (45%) opined that offenders should be prosecuted and pay ransom compensation to victims if convicted.

Figure 11 Respondents Suggestions on How Environmental Crimes can be addressed within the State

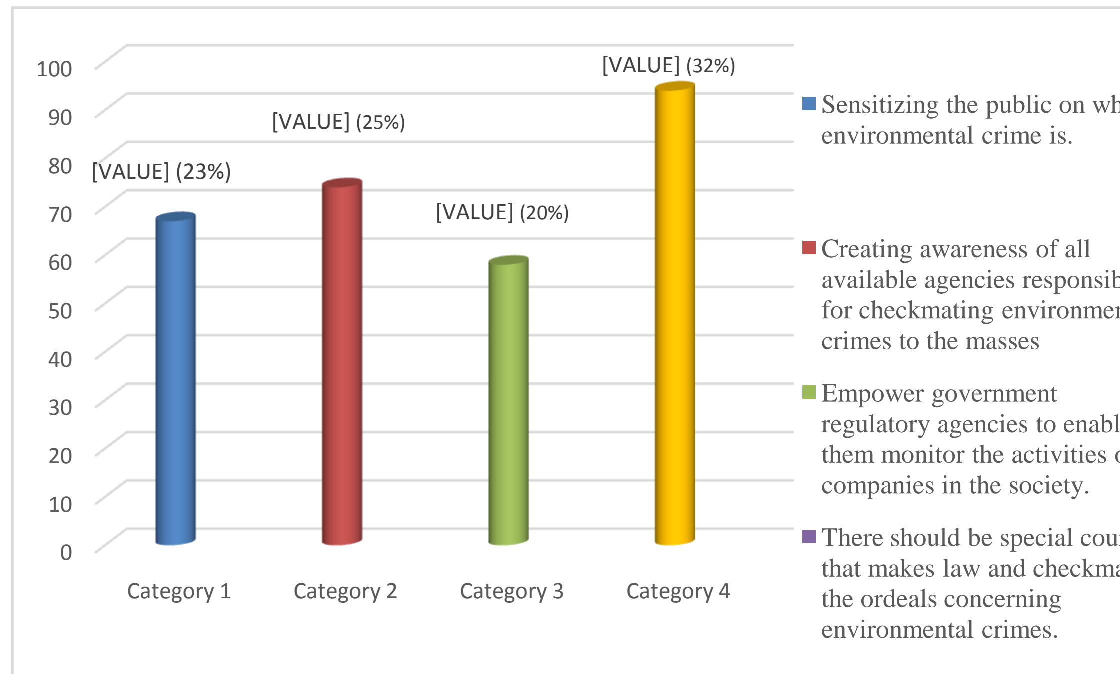

Figure 11 shows an open questions requesting respondents' suggestions on how environmental crimes can be fully addressed within the state. Their responses were grouped into four main categories. From the table, the analysis revealed that 67 (23%) of the respondents were of the view that sensitizing the public on what environmental crime is would help address its issues within the state, 74 (25%) opined that creating awareness of all available agencies responsible for checkmating environmental crimes to the masses would enable defaulters regulate and checkmate their activities that would cause environmental crime to the

community, 58 (20%) suggested that empowering various government regulatory agencies to enable them monitor the activities of companies in the society would help curtail environmental crimes in the state while 94 (32%) posited that there should be special courts that makes laws and checkmate the ordeals concerning environmental crimes. As such cases of environmental pollutions detrimental to the health of its citizens are duly judge with stipulated consequences.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

It is trite to say that the environmental situation in Nigeria is deplorable and sickening as well as hopeless. This is because the laws which exist on paper are not properly synergized for enforceability by the very authorities that have the responsibility of ensuring that these laws are non-negotiable enforced. By looking at the condition of the environment in Nigeria, it is self evident that the police, the Court, Nigerian- Federation, States and Local Government Councils lack effective enforcement strategies and mechanisms for the implementation of the laws. The agencies are not financially viable to meet their obligations and perform their functions effectively. The Nigerian state lacks modern technology and standard equipments for monitoring the environment to prevent pollution. The challenges that Nigeria faces with regard to achieving an effective and sustainable environmental protection can be attributed to the absence of an effective framework that can serve as a vehicle for the implementation of various laws, policies, and

regulations. There is obvious lack of political will on the part of different arms and tiers of government to ensuring protected and life sustainable environment. Despite the abundance of legislations and regulations, especially post-Koko incident and Nigeria's environmental policy to pursue sustainable development and an environmentally sound resources management, there appears till date no coherent legal and practical framework to actualize environmental protection in line with international best practices and as seen in other climes, such as USA, Australia, India and South Africa. USA has extensive crime detection and enforcement plan, India has sound civil protection of the environment especially via the Courts pronouncements. In fact the Courts deter environmental Pollution in India, while the South African environmental Tribunal takes seriously its job as well as the citizens pointed reportage. The Nigerian Courts must awaken to pronouncements that will deter environmental pollution and give the citizens the boldness to report.

The Courts in Nigeria do not appear to understand as a matter of urgency and necessity to be very proactive on environmental crime so as to assist the concerned

environmental protection agencies and the Nigerian citizens to achieve enforceability against crimes to the environment.

The Laws are there in quantum though should be made stiffer and clearer by the National Assembly and State Houses of Assembly in line with international best practices. It is also very doubtful if the Courts in Nigeria are mindful of the civil and criminal liabilities on environmental pollution. There ought to be importation of restitution to the environment by the polluters or offenders though these facts appear ignored by the agencies and Courts. The HWSCP Act 1990 (H1 LFN 2004) criminal provisions appear impossible to implement. All in all, environmental protection and safety must not be sacrificed on the altar of investment for energy so as to guarantee sustainable development for the present as well as the future generations when environmental crime is minimized or punished. It is obvious too that the citizens are mostly unaware of the pollutions going on within their environment thus they need to be sensitized by the Environment Agencies.

6.2 Recommendations

The researcher in the end made some recommendations as follows:

i. The Judiciary must create special Courts with proper training to handle environmental matters as in other climes.

ii. Borrow from other jurisdictions especially USA, India and South Africa pattern of judgments on the way forward in curbing environmental pollution akin to deference on environmental crimes.

The Courts must be proactive in adjudication on environmental crimes to protect any interest of the common or poor citizens of Nigeria. By such concept, the Courts will stem the plot of the wealthy corporations as exemplified by the USA Courts, the role of Non-Governmental Organisations (NGOs) to carryout advocacy and sensation to the citizens for the citizens must be alive to protection of their environment thus:.

Citizens must have knowledge of what amounts to;

i. Environmental crimes.

ii. Encouraged to participate in the prevention of environmental crimes.

iii. Join to protect the environment by monitoring.

iv. Reporting to the Agency and ensuring diligent prosecution by the appropriate

bodies.

The Environmental Agency (Agencies) must regularly carry out sensitization on environmental pollutions by enlightening the people, monitor compliance by corporations and individuals, and diligent prosecution, Evaluate annually effects and maintain data base which will show progress and assist in researches on environmental healthiness of the Nigeria State.

The Legislative Arms of Government should as a matter of urgency:

i. Enact laws which will bring Nigeria in line with global tenets on environmental protection and properly criminalise environmental harm with adequate punishment.

ii. Study how laws of other climes are made more explicit and proactive so as to deter environmental pollution amounting to crime.

iii. Repeal obsolete and non-implementable laws.

iv. Make amendment to environmental law to create zonal (6 geopolitical zones) offices of the Environmental Agency for ease of sensitization and monitory as well as reporting for prosecution of offenders.

That the Executive Arms of Government at both Federal and State ought to:

i. Provide its environmental agencies with adequate tools of engagement so as to enforce the available laws on environmental degradation and offence.

ii. Budget strictly for environmental enforcement activities like in other climes

iii. Create and furnish special Courts and Tribunals with specialized manpower. That is training.

iv. Create environmental crimes monitoring terms at Federal and State levels whose members must be trained.

v. Engage in proper formal technological and documentation training so as to have a clear and informative database on environmental crimes prosecutions and punishments.

vi. The Courts should encourage payment of exemplary damages to ensure stiff penalties which will act as deterrence signal to polluters thus ensure crime free environment in Nigeria.